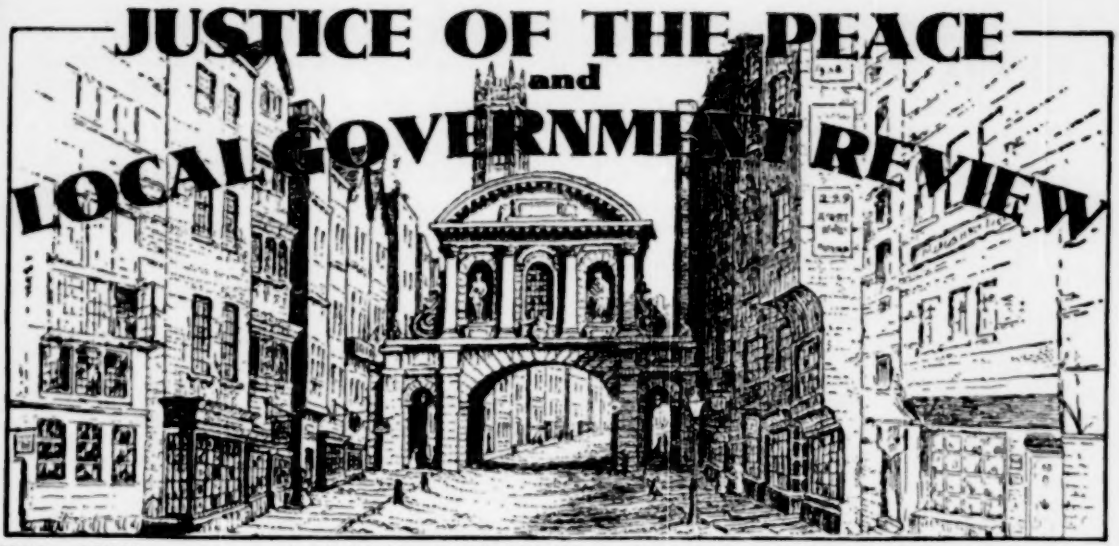

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

Some of the vacancies in these columns relates to men and women coming within the provisions of the Control of Employment Order, 1947, S.R. & O., No. 1921, or the vacancy is for employment exempted from the provisions of the Order.

Amended Advertisement

CITY OF BIRMINGHAM

Conveyancing Clerk

APPLICATIONS are invited from experienced Solicitors' Clerks (Unadmitted) for the appointment of Conveyancing Clerk in the Town Clerk's Office at a salary in accordance with Grade IV (£480-15-525 per annum).

The appointment will be subject to medical examination and to the provisions of the Local Government Superannuation Act, 1937.

Applications, stating age and full particulars of experience, with copies of testimonials or names of persons to whom reference may be made, endorsed "Conveyancing Clerk," must reach me not later than Friday, February 17, 1950. Canvassing will be a disqualification.

J. F. GREGG,
Town Clerk.

The Council House,
Birmingham, 1.
January 13, 1950.

COUNTY OF MONMOUTH

Appointment of Deputy Clerk to the Justices

APPLICATIONS are invited for the above position at a salary of £750 rising by three annual increments of £50 to £900, from Solicitors with considerable experience in Magisterial Law and be able to take entire charge of Courts without supervision.

Applicants must be not more than 40 years of age.

The successful candidate will be required to pass a medical examination.

Applications, giving full details and accompanied by two recent testimonials, should reach the undersigned not later than February 4, 1950.

H. E. BADMINGTON,
Clerk to the Justices.

Central Chambers,
Tredegar.

COUNTY OF BUCKINGHAM

Appointment of Full-Time Male Probation Officer

APPLICATIONS are invited for appointment as full-time probation officer in mid-Bucks, with office in Aylesbury, subject to the Probation Rules, 1949, and the Probation Officers (Superannuation) Order, 1948, at a salary in accordance with the prescribed scale. Possession of a motor-car is desirable and mileage allowance on the County scale will be paid.

Applications, stating age, qualifications, experience, etc., together with the names of two referees, should reach the undersigned not later than February 24, 1950.

C. R. CROUCH,
Clerk of the Peace for Bucks.

County Hall,
Aylesbury.
23.1.50.

COUNTY BOROUGH OF WEST HAM

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials must reach me not later than the first post on February 17, 1950.

G. V. ADAMS,
Clerk to the Justices and Secretary of the Probation Committee.

Magistrates' Court,
West Ham Lane,
Stratford, E.15.

SURREY COUNTY COUNCIL

Legal Assistant (Unadmitted)

APPLICATIONS are invited for the appointment of a Legal Assistant (Unadmitted) for the Clerk's Department, on Grade IV A.P.T. (£480 x £15—£525), plus London Allowance.

Applicants must possess a sound knowledge and experience of conveyancing; law and practice and some common law experience is desirable.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, the Staffing Regulations of the Council and to the passing of a medical examination.

Applications for the appointment stating age, full details of experience and qualifications (if any) accompanied by one recent testimonial and the names and addresses of two referees, must reach the undersigned not later than February 7, 1950. Canvassing will disqualify.

DUDLEY AUKLAND,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

COUNTY BOROUGH OF MERTHYR TYDFIL

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a whole time female Probation Officer. Applicants must not be less than 23, nor more than 40 years of age, except in the case of a serving whole time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers' (Superannuation) Order, 1948, and the salary will be according to the scale prescribed by those Rules.

The ability to speak Welsh will be an advantage.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than February 18, 1950.

WILLIAM G. PROTHEROE,
Clerk to the Justices and Secretary to the Probation Committee.

Magistrates' Clerk's Office,
132, High Street,
Merthyr Tydfil.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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Pages 41-56

Offices: LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

NOTES of the WEEK

Negligence on the Highway

The case of *Shears* v. *Matthews* [1948] 2 All E.R. 1064 gave rise to much discussion and was felt to leave the law in an unsatisfactory position if it was to be the final answer on all cases of the kind brought under s. 78 of the Highways Act, 1835. It will be remembered that the facts were that the driver of a car, which was stationary, negligently opened the off-side door and so struck a passing cyclist. He was charged under s. 78 with an offence of wilful misbehaviour or negligence, *as the driver of the car*, which caused hurt or damage to another person on the highway. The Divisional Court held that what he did was not done as a driver and that the offence charged was not made out. In two practical points since (at 113 J.P.N. 320, and 435, in each cases in P.P. No. 4) we suggested that had the offence been charged under s. 78 as being committed by "any person" as the section permits, a different result might have followed. Now in *Watson* v. *Lowe* (1950) W.N. 26, the Divisional Court has held that this point of view is correct, and that the occupant of a car who negligently throws open the door to the inconvenience of another user of the highway may properly be convicted under s. 78 of "unlawfully by negligence interrupting the free passage of any person waggon carriage etc. on any highway."

We welcome this decision, but we are left wondering what is the appropriate maximum penalty under the section when the offender is neither the driver nor the owner of the vehicle in question. The section enacts that the offender shall "for every such offence forfeit any sum not exceeding five pounds, in case such driver shall not be the owner of such waggon . . . and in case the offender be the owner of such waggon . . . then any sum not exceeding ten pounds." The section continues with provisions that "every such driver" is liable to be arrested and so on, but there is no mention of the fate reserved for him who is neither driver nor owner. Will yet another High Court decision solve this problem?

Applications to Remove a Disqualification

Section 5 of the Motor Spirit (Regulation) Act, 1948, provides that where any private motorist is convicted of having what is popularly known as "red" petrol in the tank of his car he shall be disqualified from driving for a period of twelve months. However, s. 7 empowers a person so disqualified to apply, after six months' disqualification, to a court of summary jurisdiction for the same division or place as the court by which he was convicted, and that court may, if it thinks there are good reasons for shortening the term of the disqualification, by order remove the disqualification as from the date specified in the order. It will be noticed that this section follows closely the wording of s. 7 of the Road Traffic Act, 1930. In connexion with applications under this latter section, special provision was made by the Summary Jurisdiction Rules, 1932, adding r. 52A to the Summary Jurisdiction Rules, 1915, providing that such applications should be by way of complaint for an order and that the Summary Jurisdiction Acts should apply to the proceedings. No such corresponding provision occurs in the Motor Spirit (Regulation) Act, nor has the procedure under r. 52A been applied to applications under this Act. It may be that it was intended that applications under the 1948 Act should be *ex parte* applications. On the other hand, it might be argued that the prosecutor is properly interested in the result of such applications, and the court may well be glad, in considering whether there is reason for removing the disqualification, of such information as the prosecution can supply. It may be noted that the institution of proceedings is limited by s. 9 of the Act, and in practice it seems that nearly all proceedings are instituted by or with the consent of the Ministry of Fuel and Power.

In a metropolitan court recently when application was made under s. 7, a summons to show cause why the court should not shorten the period of disqualification was, with the consent of the Ministry of Fuel and Power, served upon that Department which was the original prosecutor, and the court was informed that this course had been adopted in a number of cases. From the practical angle there is no doubt a good deal to be said in favour of this procedure but whether this could be strictly justified may be open to doubt. Certainly a court would feel no slight hesitation in awarding costs to the Department against an unsuccessful applicant.

We dealt with a question on this point in our issue of December 10, 1949, and, on the balance of argument, we adhere to the opinion we then expressed, though we are aware that it is not the opinion of some whose views are entitled to respect.

Evidence of a Wife

Several newspapers recently reported a case at a magistrates' court in which, it was stated, a young woman who had been married only a few hours gave evidence for the prosecution, the defendants being her husband and another man.

This is rather puzzling, and on the face of it either the report is incorrect or there was something wrong in the procedure. If, as the reports said, the charge was one of wounding a man, the evidence of the woman would seem to have been inadmissible, by reason of the fact that she was the wife of one of the accused. Except as provided by the Criminal Evidence Act, 1898, and certain other statutes the wife of an accused may not give evidence against him, unless the offence be one of violence towards her. This particular case does not appear to be one which came within the exceptions. Where several persons are jointly charged, the prosecution cannot call the wife of one against any of the co-defendants unless she is competent to give evidence against her own husband: *R.* v. *Mount and Metcalfe*

(1934) Cr. App. P. 135. We noticed that one report stated that the wife was told she was not bound to give evidence, but she agreed to do so. If she were competent, under the Criminal Evidence Act, it is true she would not be compellable; but our point is that apparently she was not competent. That is why we think there must be some explanation.

Punctuation

In the case referred to in our Note of the Week at p. 25 *ante*, under the title "Renewal of Solicitors' Practising Certificates," some importance was attached to a comma, and it certainly could appear to be of importance in construing the section. At the same time, it has to be remembered that punctuation is not usually suitable to be taken into account in construing statutes. At 31 *Halsbury* 465, it is stated: "Punctuation and brackets do not form parts of a statute, and if found on the Parliament roll, or a statute as printed by the King's Printer, can only at the most be regarded as *contemporanea expositio*." In a footnote Lord Esher, M.R., is quoted as saying: "To my mind it is perfectly clear that in an Act of Parliament there are no such things as brackets, any more than there are such things as stops."

It is often said that a legal document of any kind should be so worded as to be unambiguous even if there were no punctuation marks. In general, attention is not paid to punctuation in a will, but this is not a strict rule, and whether punctuation shall be relied on depends on the circumstances (34 *Halsbury* 166).

The temptation to have some regard to punctuation where there is room for doubt about interpretation is almost irresistible. In the case of a will, reference to punctuation is evidently justifiable in some circumstances, and it seems that it is occasionally justifiable in construing a statute.

Appeal to Quarter Sessions

Although there was really no new point raised in the case of *Hall* v. *Pattinson*, (1949) which was heard by a Divisional Court on December 19, it is worth notice because it dealt with two matters which are not always remembered clearly.

The appeal, which was by Case Stated by a recorder, arose out of the prosecution for an alleged offence against the Motor Spirit (Regulation) Act, 1948, in respect of the possession of commercial petrol. Before the court of summary jurisdiction an analyst's certificate was relied upon, but a copy of this was not served on the defendant seven days before the hearing. On the appeal to quarter sessions, it was contended that as the certificate was the only evidence as to the nature of the petrol before the court below, the appeal should be allowed.

For the prosecution it was submitted that the certificate was at all events admissible at this later hearing; alternatively, that the analyst could be called as a witness. The learned recorder allowed the appeal on the submission of the appellant.

The Divisional Court sent the case back to the recorder to hear the appeal, admitting the evidence of analysts. The Lord Chief Justice observed that the defendant had waived his objection to want of sufficient notice of the certificate by not taking the point in the court of summary jurisdiction. The notice was for his protection, and he could waive it if he chose. There was the further point that an appeal to quarter sessions was a rehearing of the case, at which evidence could be called which was not called in the court below. Therefore the conviction should not have been quashed on the objection, but the appeal should have been heard on its merits, the analyst's evidence being admitted.

Lord Goddard pointed out that the certificate was a convenient form of evidence, but not the only way of proving the nature of the petrol; it was always open to the prosecutor to call the analyst, and when his evidence was tendered at quarter sessions it should have been heard. As to an appeal to sessions being a rehearing, the cases of *R.* v. *Pilgrim* (1870) 35 J.P. 169 and *R.* v. *Glynne* (1871) 36 J.P. 406 were sufficient authority.

It is sometimes thought that the only question for quarter sessions hearing an appeal against a summary conviction is whether or not the court of summary jurisdiction was right in convicting on the evidence then before it. That is not so; the case is heard all over again, and perhaps new witnesses are called. That is why the appeal court, in allowing an appeal, sometimes adds that it is not asserting that the court below came to a wrong conclusion on the evidence given before it, and that it is not unlikely that the summary court would have come to the same decision as quarter sessions if it had heard the additional witnesses.

Requirements in Probation Orders

In deciding what special requirements to insert in a probation order, courts should, we think, be careful to make each requirement so explicit that, in the event of proceedings for an alleged breach of a requirement there can be no dispute as to what was really required. A requirement couched in vague or general terms may be open to objection on this score.

We have heard of cases in which a court has prescribed a requirement that the probationer is "to undergo psychiatric treatment," or is to "place himself in the hands of a psychiatrist." This seems to us unsatisfactory. The order does not say where or by whom examination or treatment is to take place, and seems to leave it open to the probation officer to decide, or at least suggest what is to be done about it. The probationer, invited to become an in-patient at some institution, or to place himself in the hands of a particular practitioner or clinic, may say he will have none of these, but will submit to a different form of treatment or will accept treatment from a practitioner of his own choosing. If summoned for a breach of requirement, he would say he had not refused to comply with the order of the court, but only with a specific condition put upon him by the probation officer. Any dispute of this kind is to be deprecated, and can easily be avoided if the court is definite in its requirements.

One has only to look at s. 4 of the Criminal Justice Act, 1948, to realize how carefully the question of requirements of mental treatment was considered. The powers of the court to specify, within definite limits, the nature of the treatment are clearly stated, and it seems to us that the courts should always state such requirements in the manner laid down in the section. In case of a reference to undergo particular treatment, a probationer is protected by s. 6 (6) if the court considers the refusal reasonable.

Special Procedure

We spoke at 113 J.P.N. 579 of an Order in Council, then at draft stage, applying the Statutory Orders (Special Procedure) Act, 1945, to a number of order-making powers which are listed in sch. 1 to the Order. We anticipated some opposition to certain items, but we seem to have been wrong. The necessary addresses from both Houses were presented, and the Order took effect from January 1, 1950. The effect will be that orders made after January 1 under the scheduled powers, which previously would have been provisional only, will be subject to "special parliamentary procedure." The Order in Council is S.I. 1949, No. 2393, entitled the Statutory Orders (Special Procedure) (Substitution) Order, 1949, and is published by H.M. Stationery Office, price 3*d.* net.

CONDONATION

[CONTRIBUTED]

A defendant to a summons, heard recently in a metropolitan matrimonial court, on learning that the magistrate found to be proved a charge that he had been persistently cruel to his wife, exclaimed: "But, your Worship, I had sexual intercourse with my wife only last night." Clearly, he intended to claim that his wife had thereby condoned his past ill-treatment of her, and was not entitled, therefore, to succeed in her application for an order of separation.

There is no doubt that if there has been, what the law regards as, condonation, the wife is barred of her remedy unless, and until, the cause of complaint condoned has been revived by some further matrimonial offence: *see*, on this point, *Lieck and Morrison on Domestic Proceedings* at p. 45 *et seq.*

What, then, does condonation mean from the legal point of view? A leading case on the subject was *Keats* v. *Keats and Montezuma* (1859), 1 Sw. & Tr. 334, decided shortly after the establishment of the Court for Divorce and Matrimonial Causes, with jurisdiction in matrimonial causes transferred from the Ecclesiastical Courts. (The dicta therein are extensively quoted in *Fearn* v. *Fearn* [1948] 1 All E.R. 459, from which the subjoined passages are copied.) There, the Judge Ordinary said: "I have not been able to find in the reports of cases decided in the Ecclesiastical Courts any precise definition of what was meant in those courts by the word 'condonation'; but looking to the circumstances under which former judges have held condonation to have been established, I have come to the conclusion that condonation means a 'blotting out of the offence imputed, so as to restore the offending party to the same position he or she occupied before the offence was commited.'" This statement was examined by the full court in order to decide whether the definition was correct and whether it was to be adopted as the principle upon which all similar cases were to be decided for the future. The Lord Chancellor, Lord Chelmsford, said that "the second part of the proposition . . . explains as well as restricts the first part. It must be such a blotting out of the offence as restores the wife to her former position." Dealing with a contention that no condonation by words only, however strong, would be sufficient, unless they were followed by sexual intercourse, he said: "The acts which prove forgiveness may be so strong and unequivocal, as by taking home an offending wife and cohabiting with her, that they may conclusively establish condonation. But words, however strong, can at the highest only be regarded as imperfect forgiveness, and, unless followed up by a something which amounts to a reconciliation and (of) a re-instatement of the wife in the condition she was in before she transgressed, it must remain incomplete . . ." He continued: "In my judgment there can be no condonation which is not followed by 'conjugal cohabitation' . . . To say that condonation requires conjugal cohabitation or connubial intercourse leaves the nature of the cohabitation or intercourse to be adapted to the varying condition and circumstances of different parties." His conclusion was: "The forgiveness . . . must not fall short of reconciliation, and this must be shown by the re-instatement of the wife in her former position, which renders proof of conjugal cohabitation, or the restitution of conjugal rights, necessary."

The decision in *Keats* v. *Keats*, *supra*, was approved and followed by the Court of Appeal in *Crocker* v. *Crocker* [1921] P. 25. Other decisions made it clear that the forgiveness was based on awareness of the matrimonial sin committed, not covering other delinquencies undiscovered (*Bernstein* v. *Bernstein* [1893] P. 292, and was conditional on no further matrimonial offence being committed (*Dent* v. *Dent* (1865) 4 Sw. and Tr. 105; *Copsey* v. *Copsey and Erney* [1905] P. 94).

This notion of conditional forgiveness was examined by McCardie, J., in *Cramp* v. *Cramp and Freeman* [1920] P. 158. In this case, the wife admitted that, after her husband had discovered her adultery, he never forgave her and all along intended to divorce her, but claimed (and so the judge found) he did have sexual intercourse with her on several occasions after she left his house "as a dismissed woman." He pointed out (at p. 161) that "By the matrimonial law of this country, the offence of every married person is recorded on tablets which do not perish. If condonation takes place, the record is not blotted out but over it is placed an obscuring veil. Until a new matrimonial sin occurs, the merciful barrier to sight remains. If, however, a further offence be committed, then the injured spouse may lawfully raise the veil and point with rigorous finger to the record of offence which had previously been hidden from view. No matrimonial offence is erased by condonation. It is obscured, but not obliterated." After examining a number of dicta and cases including *Keats* v. *Keats*, *supra*, and *Crocker* v. *Crocker*, *supra*, he pointed out that the emphatic use of the word "forgiveness" tended to obscure the true meaning of the doctrine of condonation and to treat forgiveness in the lay or Christian view of that term as an absolute condition of condonation. Forgiveness, whilst an important circumstance, was not essential to proof of condonation. He thought a truer definition of condonation was a conditional waiver of the right of the injured spouse to take matrimonial proceedings, and was not forgiveness at all in the ordinary sense. He considered that "condonation is not conditional forgiveness, but a conditional re-instatement of the offending spouse."

Until the case of *Fearn* v. *Fearn*, *supra*, was heard in the Court of Appeal, this dictum (as is pointed out in *Rayden on Divorce*, 5th edn., p. 141, note (*a*)) stood alone and could not be supported; but Bucknill, J., in this case cited *Cramp's* case as illustrating the importance of re-instatement and the comparative irrelevance of forgiveness as an essential feature of condonation. Condonation being an absolute, and not a discretionary, bar to a decree of divorce, he thought it reasonable to assume that the law requires a high degree of proof that the innocent husband has not only intended to waive the offence, but has manifested that intention by restoring the guilty wife to her former position.

The word "forgiveness" in this connexion is, therefore, a technical expression in which it has quite a different meaning from that which the layman gives it. It is said in the note in *Rayden* already cited that "Forgiveness must be not in any psychological or theological sense as implying that no resentment at the wrong is any longer felt, but in the legal sense as implying merely that the legal remedy for the wrong is waived." In other words, the condoning spouse says, in effect, to the other: "You have done me a matrimonial wrong, but I will not now pursue my legal remedy, and to that extent I forgive you. I shall put you back into your former position, but mark, however, I have not obliterated the wrong from my mind, and you will be secure from proceedings by me only so long as you do me no further matrimonial wrong." In fact, in most cases, the offended spouse, recking little or nothing of legal signification and subtlety, mercifully thinks something like this: "Let byegones be byegones: I pardon your fault, and shall try to forget."

Condonation is defined in *Rayden* (at p. 139) as "Re-instatement in his or her former marital position of a spouse who has committed a matrimonial wrong of which all material facts are known to the other spouse, with the intention of forgiving and remitting the wrong on condition that the spouse whose wrong is so condoned does not thenceforward commit any further matrimonial offence." There are, therefore, two essential elements in condonation, *viz.*, first and foremost, re-instatement of the offending spouse; and secondly, an intention to forgive and remit the wrong done. So the court, to decide the question of condonation, arising oftentimes in circumstances of doubt and obscurity, is set the difficult task of ascertaining a party's intention. Intention is a somewhat illusive test, but it suffices, no doubt, when applied objectively, *i.e.*, when the intention of the spouse is judged by what he or she says or does.

The question is, then, one of re-instatement coupled with a conditional forgiving in the technical sense as explained above. The inquiry whether there has, in fact, been re-instatement is much facilitated where, ever since the rupture, the parties have lived separately and apart, if not under different roofs, at least in different parts of the same house. In an earlier state of society, a common test of condonation was: have the parties gone back under the same roof?, but in the changed conditions of life today, so simple a test is less frequently applicable (*Germany* v. *Germany* [1938] 3 All E.R. 64). When the parties have thus physically separated, the coming together again is more easily established than when they have been compelled, usually because of the housing shortage, to continue, notwithstanding the rupture, to occupy the same room, or, maybe, even the same bed.

No doubt, good indication of the re-instatement of the offending spouse is the resumption of cohabitation, *i.e.*, setting up a matrimonial home together, not necessarily under the same roof (*Abercrombie* v. *Abercrombie* [1943] 2 All E.R. 465; 107 J.P. 200), after full knowledge of the matrimonial offence has been gained. But the wife must be put back as a wife and not merely a housekeeper (*Cook* v. *Cook* [1949] 1 All E.R. 384; 113 J.P. 164). It is here, perhaps, well to observe that McCardie, J., said in *Cramp's* case (at p. 166): "Matrimonial cohabitation (which may vary with the circumstances and position of the parties) is merely one form of re-instatement, and even such cohabitation may be of so short a period or of such a nature as not to show condonation." Still better evidence is the resumption or continuance of sexual intercourse (*see* the cases and notes in note (*c*) of *Rayden*, p. 140). Cohabitation and sexual intercourse, it has often been pointed out, are not synonymous and, whilst cohabitation may exist without sexual intercourse, as, for example, in the case of an elderly couple, there may well be in other cases a continuance or resumption of sexual intercourse without that common intention to lead a joint life which is the hall-mark of cohabitation. *Mummery* v. *Mummery* [1942] 1 All E.R. 553, and *Abercrombie* v. *Abercrombie*, *supra*, both of which cases applied *Rowell* v. *Rowell* [1900] 1 Q.B. 9, support this proposition. In the former case, the husband had deserted his wife in 1937, but on a single occasion in or about June, 1940, he spent a night with her at his own suggestion and marital intercourse took place. The wife hoped that married life would be resumed, but her husband had no intention of returning to her and left her next morning and did not return. It was held that "as regards the wife, at any rate, an act of sexual intercourse is not conclusive on the question of condonation, and it does not raise an irrebuttable presumption that cohabitation has been resumed." In *Abercrombie's* case, it was similarly decided that "the resumption of cohabitation depends on the intention of both parties, as to which the mere fact that one or more acts of sexual intercourse have taken place, though of great weight, is not conclusive."

The courts naturally take a very different view of the effect of a husband's sexual intercourse with an errant wife than that of a wronged wife's intercourse with her husband. In a wife, resumption of marital intercourse may come about through her laudable effort (as in *Mummery's* case) to win back an estranged husband, and if the effort fails the act or acts of sexual intercourse will not necessarily be counted against her as condonation of the matrimonial wrongs done her. They may not be sufficiently indicative of her intention to re-instate, forgive and remit the wrongs. On the other hand, a husband cannot resume sexual relations with an adulterous wife without thereby, in law, forgiving her sin and restoring her to her former position. Several authorities to this effect are cited by McCardie, J., in his judgment in *Cramp's* case, *supra*, which he concluded with these words: "In my opinion, therefore, a husband who has sexual relations with his wife, after knowledge of her adultery, must be conclusively presumed to have condoned her offence. This is the rule of righteousness and I am glad to think that it is also the rule of law. To hold otherwise would be a blot on the jurisprudence of this country." More recently, Langton, J., said in *Germany* v. *Germany*, *supra*: "So far as a man is concerned, there is no going back. One act of marital intercourse would always be construed as condonation. But in the case of a woman, the courts have been more lenient."

A problem of not infrequent occurrence during the world wars arose when a husband on war service abroad, after receiving a confession of adultery from his wife, wrote letters of forgiveness to her, permitting her marriage allowance to continue; but later, when he heard that her conduct had been worse than she had led him to believe, changed his attitude and began divorce proceedings. These were, roughly, the facts in *Fearn* v. *Fearn*, *supra*. The question whether condonation can ever be merely by words, whether oral or written, was disposed of emphatically in the negative by Bucknill, J., who after citing Lord Chelmsford's decision, set out above, and the remarks of Lord Sterndale, M.R., in *Crocker* v. *Crocker*, *supra*, insisted (as stated above) on not only a waiver of the offence, but a manifestation of that intention by restoring the wife to her former position, adding that the wife must have been removed from her position as a wife before she can be restored to it. In *Wilmot* v. *Wilmot and Martin* [1948] 2 All E.R. 123, however, Willmer, J., refuted the argument that there could be no question of re-instatement if the wife had never been displaced, inasmuch as it was possible for the displacement to be merely notional, which could be immediately made good by condonation or re-instatement. He instanced the ordinary case where the parties are face to face when the confession or discovery of adultery is made: there, *prima facie* the guilty wife did not have to be displaced from her position, for the husband might respond immediately by saying: "I forgive you all you have done and I propose that we go straight on together."

Bucknill, J., laid down in *Fearn's* case the principle, in deciding whether mere words could ever constitute condonation, that the innocent husband, after knowledge of the adultery, must not behave in such a way as seriously to prejudice the wife of which prejudice sexual intercourse was an extreme illustration. He thought that it would create great difficulties and injustice if mere words were to be accepted as proof of condonation.

It is clear, therefore, that a husband who schemes to deprive a wife of her remedy at the magistrates' hands for a matrimonial wrong by having sexual intercourse with her before the hearing, with or without her consent, is likely to be disappointed in the legal results which he may imagine to follow. There can be no condonation unless he has been fully and freely restored to a husband's position by a forgiving wife.

P.J.H

A CASE TO ANSWER

By L. H. SHARPE, *Solicitor, Deputy-Clerk to the Bromley, Kent, Justices*

With the main exceptions of licensing and bastardy applications, the procedure in magistrates' courts is governed by the Indictable Offences Act, 1848, and by the Summary Jurisdiction Act, 1848, as amended by later statutes. Although those statutes prescribe the entire course of the proceedings they make no express provision for the making of a submission at the close of the case for the prosecution or for the complainant that there is no case for the defendant to answer. It is generally accepted, however, that such a submission may properly be made and ruled upon in magisterial proceedings, for not only is the practice in the best interests of justice, particularly in criminal cases (where it is right that an accused person should not be required to incriminate himself) but it also often results in a substantial saving of time.

The practice of making a submission is so well recognized that it is surprising to find so little clear guidance to justices as to the principles to be applied when they are considering whether or not there is a case to answer; indeed, writers of text-books and articles are in disagreement on this matter which, although of little moment in many cases, is in other cases of vital importance. If justices say that there is a case to answer, are they saying, in effect, that, in the absence of any explanation on the part of the defendant, they would then be prepared to find the case proved, or are they merely implying an opinion that on the evidence so far adduced they could reasonably find the case proved? To put it another way, if they rule against a submission and the defendant then takes no further part in the proceedings, are they bound to convict or make an order as the case may be?

In proceedings before examining justices the problem is a comparatively simple one for s. 25 of the Indictable Offences Act, 1848, requires the justices at the close of the case for the prosecution to decide whether or not the evidence offered upon the part of the prosecution is "sufficient to put the accused party upon his trial for any indictable offence." In the case of *R. v. Brixton Prison (Governor)* (1937) 100 J.P. 458, Swift, J., said these words meant "that there must be such evidence that if uncontradicted at the trial a reasonably minded jury could convict on it . . . The magistrate is not trying the case, he is only determining whether there is such a case that a man ought to be sent to take his trial before a jury." The section clearly requires the justices to consider the matter before the accused party is charged and asked whether he desires to make a statement or to give evidence. However, s. 12 of the Criminal Justice Act, 1925, in subs. (2), provides that "immediately after the last witness for the prosecution has been bound over to attend the trial, the examining justices shall read the charge to the accused," and, in subs. (8) that "The examining justices shall, notwithstanding anything in the 'Indictable Offences Act, 1848,' before determining whether they will or will not commit an accused person for trial, take into consideration his statement or any such evidence as is given . . . by him or his witnesses." The contradiction here is merely apparent and not real: the justices are required to consider at the close of the case for the prosecution whether a sufficient case has been made out, if not they should forthwith discharge the accused, whereas if a case has been made out, the hearing must proceed, and the justices when finally deciding whether to commit the accused party for trial must take into account any statement or evidence by him. To conclude, a case to answer, so far as examining justices are concerned, means merely a case on which the justices think a reasonably minded jury could convict. It is not for the justices to balance the evidence, that is for the jury, although the justices should, of course, disregard the testimony of any witness who is clearly not deserving of credit.

A more difficult question is what is meant by a case to answer in proceedings under the Summary Jurisdiction Acts. Those Acts prescribe in general the same procedure for both criminal and civil cases and it is convenient to consider both types of case together, as, for the present purpose, the only important difference is in the quantum of proof required: criminal charges must be proved beyond reasonable doubt whereas in civil actions, with some exceptions, proof simpliciter is all that is necessary. Incidentally, the higher degree of proof now required in criminal cases appears to have been unknown before the latter part of the eighteenth century when it was gradually introduced, applying at first only to cases involving capital punishment. Cases being dealt with under the Summary Jurisdiction Acts are essentially different from those being dealt with under the Indictable Offences Act and from those being tried by a jury, since in the latter cases the jurymen alone are the judges of fact whereas in summary proceedings it is the duty of the justices to consider the degree and sufficiency of the evidence and the credit due to the witnesses. This essential difference renders the dicta of judges in criminal cases of rather less value in the present discussion. Now when a judge is sitting without a jury hearing civil actions he is, like the justices, a judge both of fact and of law, and in such actions the practice of asking the judge to rule whether or not there is a case to answer was stigmatized as highly inconvenient by the Court of Appeal in the case of *Alexander v. Rayson* [1936] 1 K.B. 169. The relevant part of the judgment is as follows: "The judge in such cases is also the judge of fact and we cannot think it right that the judge of fact should be asked to express any opinion upon the evidence until the evidence is completed. Certainly no one would ever dream of asking a jury at the end of a plaintiff's case to say what verdict they would be prepared to give if the defendant called no evidence and we fail to see why a judge should be asked such a question in cases where he and not the jury is the judge that has to determine the facts." Accordingly it has become the practice of the High Court in many civil actions for the judge to refuse to rule on a defendant's submission of no case unless he elects to call no evidence. This rule of practice, as I hope to show later, does not apply to magisterial proceedings and so if a submission is made to justices they should forthwith rule upon it without imposing any conditions. If a judge cannot separate his functions when acting as a judge both of law and of fact, then *a fortiori*, the justices cannot do so, and, in ruling on a submission, they must necessarily be expressing an opinion upon the evidence. Therefore, it seems proper that the justices should carefully consider the evidence which they have heard so far and weigh it, and unless they reach the conclusion that the case is proved, or, in criminal cases, proved beyond reasonable doubt, they should dismiss the case. If they do reach such a conclusion, however, and the defendant then tenders evidence or makes a statement, the justices must keep an open mind as to their final decision until the conclusion of the hearing, when they are required by s. 14 of the Summary Jurisdiction Act, 1848, to "consider the whole matter." In their final deliberations the justices ought to bear in mind the general principle that the burden of establishing a case never shifts from the prosecution or the plaintiff, it is only the burden of adducing evidence which may shift during the proceedings. This general principle is of particular

importance in criminal proceedings where, if the defendant's statement or evidence is sufficient merely to raise a doubt, provided that it is a real one, in the minds of the justices then they must acquit him (*R.* v. *Stoddart* (1909) 73 J.P. 348). In conclusion, then, in summary proceedings a case to answer means a case upon which the justices would convict or make an order if they heard no more.

Does the rule of practice postulated in the case of *Alexander* v. *Rayson*, *supra*, apply to summary proceedings? In the case of *Goodwin* v. *Goodwin* (1947) W.N. 28, the President of the Divorce Division, when allowing an appeal from justices, assumed that since the rule applied to that Division it also applied to matrimonial proceedings before justices, and he referred to the duty of the solicitor for the husband to decide whether or not to call him or to rest upon a submission. This appears to be the only reported case in which it has been said that the rule applies to any civil proceedings in magistrates' courts, and it is to be noted that the point could not have been fully argued as only the husband appeared at the hearing of the appeal, and the proceedings in the court below were unsatisfactory on another ground. It has nowhere been suggested that the rule has any application to criminal cases. The procedure to be followed in all summary cases is set out in the Summary Jurisdiction Act, 1848, ss. 12 and 14, of which both impose a clear duty upon the justices to allow the defendant to make his full answer and defence. Whilst it is not unreasonable to say that the duty to hear the defence is subject to there being a case to answer, it would surely be wrong to disregard the statutory requirements by refusing to hear a defendant whose submission had failed, and applying a rule that even in the High Court is not invariable but is a matter for the discretion of the judge (*Muller and Co.* v. *Ebbw Vale, etc., Co.*, [1936] 2 All E.R. 1363).

It seems that the justices should always consider whether or not there is a case to answer, even if no submission is made, particularly in criminal cases, but even in criminal cases they are not bound to stop the case (*R.* v. *George* (1908), 1 Cr. App. R. 168), and if they mistakenly rule that a case has been made out, a conviction founded on incriminating matter disclosed by the defence will not be quashed (*R.* v. *Power*, (1919) 83 J.P. 124). If the justices rule against a submission and then the defendant says no more they are logically bound to convict or to make an order, the position being essentially the same as if the defendant had been put to his election before making the submission. They are, however, not legally bound to find the case proved since they can always recant, and, by dismissing the case, imply that on reconsideration they think there was no case to answer. It appears, therefore, that it is possible for justices to rule against a submission in order to see whether the defendant will supply any evidence which may be lacking in the case against him, without their running any risk of the decision being upset on that ground, but such a practice would be so manifestly and grossly wrong as not to commend itself to any justices who were conscientiously discharging their duties.

HOUSING ACT REPAIRS

By G. H. C. VAUGHAN, B.A. (Cantab.), *Barrister-at-law*

The high cost of repairs, coupled with the fact that rents are pegged at 1939 (and in some cases, 1914) level, has produced a quite definite resistance by landlords to the carrying out of extensive repairs to their properties. The difficulty is intensified by the fact that ten years of neglect, justifiable by the war and the ensuing shortages, now render the repairs bill very heavy indeed. Nevertheless, local authorities are charged by the Housing Act, 1936, with the duty of ensuring that dwellings are "fit for human habitation," and an increasing use is being made of the power to serve notices to execute works under s. 9 of that Act. The majority of landlords are willing to shoulder this obligation and either comply with the notice or submit an alternative schedule of repairs and the matter is thus amicably disposed of. But if the landlord considers that too heavy a burden is being thrust on him, he has the right of appeal to the county court under s. 15 of the Act. Such an appeal may be based on a variety of grounds. For example, the landlord may contend that the house is not "unfit for human habitation." If the court is satisfied as to this, then it must quash the notice, as the local authority is acting *ultra vires* in issuing the notice unless the house *is* unfit. In this connexion Lord Dunedin's dictum in *Hall* v. *Manchester Corporation* (1915) 79 J.P. 385, may be mentioned: "Unfit for human habitation is a very strong expression, and vastly different from 'not up to model or modern standards.'" Another ground of appeal might be that the house is incapable of being repaired at a reasonable expense. If this is so, again the court must quash the notice and the local authority then has the alternative procedure of issuing a demolition order under s. 11, which, in present circumstances, it will no doubt be very reluctant to undertake. Although a house may be in an appalling state, it must, therefore, be nevertheless remembered that too heavy a schedule of repairs is likely to defeat its own objects. It is not unknown for £400 worth of work to be required by an authority on a house worth only £200 in the market. Here the court must obviously quash the notice. In considering this point the court must consider the value of the house to the freeholder, which may be much more than its value to the leaseholder: *Bacon* v. *Grimsby Corporation* 93 Sol. J. 742, and even though it may be difficult to get a return for the repairs out of the low rent, the court is nevertheless entitled to take into account that the alternative—demolition—would mean that the house would disappear altogether as a rent-producing unit. An example of a case in which a notice was quashed in the county court on the grounds that the works required were excessive can be seen in *Hilbery Chaplin Ltd.* v. *Uxbridge Urban District Council* [1948] E.G.D. 185.

Individual items in the schedule of repairs are also liable to be attacked on the ground that they are merely decorative repairs and do not serve to render the house more or less fit for human habitation. Local authorities (unless they have a local Act such as the Middlesex County Council Act, 1944, which states that a house so "insufficiently papered or distempered" as not to "provide reasonable amenities" is to be *deemed* unfit for human habitation), cannot use s. 9 of the Housing Act, 1936, to enforce decorative repairs but only such repairs as will render the house fit for human habitation. It is unfortunate that local authorities should have to wait until the house has reached such a bad state before they can act, especially as by that time the repairs bill has often become extremely heavy.

REPORT OF THE COMMITTEE ON POLICE CONDITIONS OF SERVICE

PART II

This part of what is popularly known as the Oaksey Report has now been published and the recommendations will in due course come before the Police Council. Part I, commented upon at 113 J.P.N. 312, was entirely devoted to pay, allowances, hours of duty and pensions, and became operative from July last.

This publication comprises 123 pages and includes a number of appendices on disciplinary punishments; housing statistics involving a detailed examination of housing in all county, city and borough forces, and a table showing the hours of duty in Aberdeen, where an experiment is being conducted in a new system of policing.

There are 166 different police forces in the country, each separately maintained by its own local police authority. About 97 *per cent.* of policemen, apart from those in the Metropolitan force, are serving in forces which range in size from 100 to 2,800 members. Regarding the powers vested by law in the police authorities, they are primarily responsible for maintaining an efficient police force in their area. In a large field of pay and conditions their full liberty of decision has come to be controlled by statutory regulations, but even in this sphere their representatives on the Police Council are entitled to express their views before decisions are reached and in practice they have played an important part in determining the pay scales of the service.

In the county police forces of England and Wales, the police authorities have no powers of control over appointment, promotion and discipline of members of the force below the rank of chief constable, except that the appointment of the deputy chief constable needs their approval; their function is to choose the best man they can find as chief constable and to see that he exercises his wide powers of appointment, promotion, discipline and control over the working methods so that it is thoroughly efficient. The Commissioners of the Metropolitan and City of London forces and the Scottish chief constables are in much the same position as county chief constables in England and Wales, although in Glasgow the magistrates' committee is the disciplinary authority for members of the city police force above the rank of inspector. Police authorities who have no powers over the appointment, promotion and discipline of their force, control some seventy *per cent.* of the police establishment in Great Britain.

The Municipal Corporations Act, 1882, makes the Watch Committee the authority in law which appoints the members of the force, makes promotions in the force and exercises disciplinary control over the force. All Watch Committees have in fact delegated a great deal of their responsibility in this sphere to their chief constables. No commanding officer can exercise proper authority in matters of internal administration if he has continually to share that authority with a committee, particularly an elected body. There is, in addition, the fact that the chief constable and the other members of the force are not servants of the police authority in any ordinary sense of the term; in the exercise of their duty they are held in law to be "ministerial officers of the central power though subject in some respects to local supervision and local regulation." The police authority have no right to give the chief constable orders about the disposition of the force or the way in which police duties should be carried out and he cannot divest himself of responsibility by turning to them for guidance or instructions on matters of police duty.

These considerations lead us to conclude that it is quite true that the borough police authorities in England and Wales were brought into line with the other police authorities, and the borough chief constable should now be vested in law with the full executive powers of a commanding officer and himself exercise these powers over the force he commands. We are supported in this conclusion by the fact that the same recommendation was made by the Desborough Committee in their report in 1920.

"One feature," continues the report, "to which we should like to draw attention is the risk, inherent in any disciplined service, that rigid control and a monotonous routine of duty will discourage personal initiative. It is particularly important that this should not happen to the police. Their main work is done by the constable on ordinary outside duty where each officer acts for the most part alone." On the subject of monotony of the work of the uniformed policeman on beat duty, the representatives of the chief constables said in a memorandum of evidence: "In the lower ranks one half of the policeman's service is spent in evening and night duty, and almost the whole of it is spent working on his own, and it has to be admitted that at any rate at night time, much of his work is lonely and tedious." Other witnesses expressed much the same view.

The committee were most interested in an experiment being conducted by the chief constable of Aberdeen, who has introduced radical changes in working methods which are said to have greatly improved the morale of the men. The essence of this scheme is that individual beats have been absorbed into districts, each policed by a team of constables usually under the charge of a sergeant. He disposes the members of the team to the best advantage and changes the individual constable's duties from time to time during his tour of duty. A wireless-equipped car is provided and this enables prompt attention to be given to incidents reported from headquarters and is available as necessary to transport men from one place to another. The duties are normally performed on foot and the system is quite distinct from the more common arrangement, under which a relatively small number of mobile officers is superimposed on an area patrolled by beat constables in the traditional way.

Dealing with qualifications for appointment, the report points out that requirements as to age and height may be waived in special circumstances with the approval of the Secretary of State, but the total effect of these conditions and the stringent medical test, is that only a small proportion of candidates can be accepted. In some forces the proportion may be less than five *per cent.* and is seldom higher than ten *per cent.*

The height standard prescribed for men by the Police Regulations is 5 feet 8 inches, but most forces have adopted a higher minimum of 5 feet 10 inches; about twenty forces accept men of 5 feet 9½ inches and about thirty more accept men of 5 feet 9 inches. "It is difficult to see," comments the report, "what purpose is served in these circumstances by retaining a nominal standard which may discourage possible candidates." Statistics supplied to the committee by the War Office about recruits for the Army under the National Service Acts indicate that a minimum height standard of 5 feet 8 inches includes more than half the male population of the country from the field of recruit-

ment of the police. There are only three forces (Metropolitan, Birmingham and Buckinghamshire) which have adopted a minimum of 5 feet 8 inches. On the whole the committee felt that too much stress has been laid upon height alone. A well built man of 5 feet 8 inches in height should be just as well able to cope with the hardships and emergencies of duty as many taller policemen. Regarding women recruits no evidence was given to suggest that a higher standard should be adopted than the minimum of 5 feet 4 inches prescribed by the regulations.

In Scotland the minimum age for admission to the police is eighteen. In England and Wales, where no minimum has been fixed by Police Regulations, few men are appointed before the age of nineteen. In the committee's view, no man should be accepted as a constable before the age of nineteen. The effect of the National Service Acts at present is that men are not free to join the police before the age of 19½. It is recommended that in future the Police Regulations should prescribe a minimum age of nineteen.

For women, the minimum age is twenty-two, this being explained to the committee to be so that only women of a certain degree of maturity are appointed. It is recommended that the minimum age for appointment for women should be the same as for men, nineteen years of age.

The attention of the committee was drawn to the practice in many forces of engaging "police cadets," boys of between fifteen and seventeen years of age who are employed on clerical work in police offices, with the view of their joining the force when they are old enough. It was felt that forces which do not yet employ a cadet class would be well advised to give the system a trial if suitable work is available. "We should be against any exemption from military service for police cadets though we realize that the gap in their connexion with the police leads some of them to enter other occupations on their return from the Armed Forces."

In considering the restrictive conditions of the police service the committee were informed that under reg. 8 of the Police Regulations, no person shall be eligible for appointment to, or shall be retained in, a police force if :—(*a*) he carries on any business or without the consent of the chief officer of police holds any other office or employment for hire or gain ; or (*b*) he resides, without the consent of the chief officer of police, at any premises where his wife or any member of his family keeps a shop or carries on any like business ; or (*c*) he holds, or his wife or any member of his family living with him holds, any licence granted in pursuance of the liquor licensing law or the laws regulating places of entertainment in the district of the police force in which he seeks employment or to which he has been appointed, as the case may be, or has any pecuniary interest in any such licence ; or (*d*) his wife, without the consent of the chief officer of police, keeps a shop or carries on any like business in the district of the police force in which he seeks appointment or to which he has been appointed, as the case may be. The committee came to the conclusion that these restrictions are necessary in the best interests of the service and that they are not in themselves unreasonable.

The joint central committee of the Police Federation of England and Wales protested against a recommendation in the second report of the Police Post-War Committee that all recruits should have their fingerprints and photographs taken. They asked the committee to recommend the discontinuance of the requirement. Photographs prove of assistance to a senior officer or any officer who has occasion to deal with some personal matter affecting a member or ex-member of the force. The fingerprints are used for the purpose of eliminating digital impressions, found at scenes of crime, so that those of the police called to the crime may not be confused with those of the perpetrators.

To remove any reasonable sense of prejudice the committee recommend that chief constables should be required by Police Regulations to file these personal records of members of the forces separately from the criminal records, and to have the finger-print record of each man destroyed as soon as he retires from the force. The photograph might serve a useful purpose after the man has left and the committee think it should be retained for a few years.

Two suggestions were made for improving prospects of promotion ; the compulsory retirement of all members of police forces after thirty years' pensionable service, and the introduction of a new rank intermediate between constable and sergeant or between sergeant and inspector. The first suggestion was rejected as being contrary to the public interest ; it seemed to the committee impossible to justify the compulsory retirement of men whose average age must be in the region of fifty-two or fifty-three if they are willing to serve and are capable of useful service. The intermediate rank idea was also rejected largely on the grounds that it might be used by an economical police authority as a substitute for the rank above. Further, there appeared to be no scope for employing those of any intermediate rank on duties that were sufficiently distinct from those of the rank above and the rank below.

In considering the Police College the committee agreed with one criticism offered ; that the average age of the students (over thirty-eight years at the present junior course) is too high. It was explained that this is necessary in the first few years and the assurance was given that it will be put right eventually.

The Police (Appeals) Act, 1927, gives every member of a police force a right of appeal to the Secretary of State if he is dismissed or required to resign as an alternative to dismissal. The appeal may be against the finding or the punishment. In 1943, the right of appeal was extended to include cases in which the punishment is reduction in rank or in the rate of pay. "We think it is right in principle that there should be an appeal against any finding of guilt however slight may be the punishment."

On the subject of housing, all the witnesses said that housing difficulties had been one of the chief obstacles to the recruitment and retention of men and that there was likely to be a continuous loss of men from this cause in the early years of their service. Few witnesses held the facile view, which has been common in public and press comment on the subject, that housing authorities need only be asked to make dwellings available. The committee find it not an easy matter to see how the provision of houses for the police is to be accelerated. The British police officer should live as an ordinary citizen and anything which tends to isolate him from his neighbours is to be avoided. It is now well recognized that when new housing developments are being undertaken involving considerable redistribution of population there should be in each neighbourhood a judicious mixture of occupations ; there seems to us to be few cases in which the arguments for inclusion can be as strong as they are for the police.

The provision of canteens also engaged the committee's attention. Men who are doing police duty out of doors in shifts covering the twenty-four hours of the day and who have too short a refreshment period to enable them to go home or to a busy restaurant for a meal need some kind of messing facilities at police stations. The special difficulties under which police canteens labour as a result of the operational needs of the service should be recognized and they should not be expected to meet their whole costs out of the proceeds of the canteen sales. Police authorities should provide accommodation, all

fixed kitchen equipment and dining room furniture, the initial supply of crockery and cutlery, and should, in addition, pay the wages of the necessary civilian staff at those canteens which are provided mainly for supplying meals during duty hours.

On the subject of welfare, policemen, like other people, have personal troubles and anxieties, often over family matters, in which the advice or help of some older or more experienced man would be of great benefit. The committee think that in at least some of the largest provincial forces (the Metropolitan police have already appointed a welfare officer) there is room for the employment of a welfare officer who is not a member of the police force, and it might also be possible for some of the smaller forces to join together and share the services of such a person.

The organization which represents the views of members of police forces below the rank of superintendent was set up in pursuance of the Desborough Committee's recommendation by the Police Act, 1919, and is known as the Police Federation. The committee agree with the witnesses who thought that the Police Federation or an organization very like it should continue to be the men's channel of representation. "If our recommendations about the Police Council are accepted," continues the report, "the Police Federation will have to bear a greater responsibility in future for settling police conditions of service . . . In order to ensure that the various limitations on the source of Federation funds and the uses to which they may be put are properly observed we think they should both be defined by the Secretary of State."

The Superintendents' Central Committee and the Scottish Superintendents' Representative Council both asked for the existence and the constitution of their organizations to be given legal status and it was felt that what had been the practice for many years might well be recognized in statutory regulations. No evidence was submitted on the need for any change in the existing channels of representation for ranks above chief superintendent. "We refrain from any comment on the subject except to repeat that, if s. 2 of the Police Act, 1919, makes it illegal, the Act should be amended."

The present provision for consultation about police conditions of service between the Secretary of State, the police authorities and the various ranks in the police service is the Police Council mentioned in s. 4 (2) of the Police Act, 1919. "We think that some matters will have to be dealt with by a council representative of Great Britain; but separate councils for Scotland and for England and Wales should deal with all matters outside certain 'reserved subjects' (except matters of promotion or discipline affecting individuals, which are not appropriate for any police negotiating or consultative body). The titles suggested for the three councils are: the Police Council of Great Britain, the Police Advisory Board for England and Wales, and the Police Advisory Board for Scotland."

The report concludes with a summary of recommendations and this illustrates the wide range over which the committee heard evidence. If the suggestions tendered are accepted by the Police Council, the charter provided for the police in Parts I and II of the report will mark a memorable step in British police history.

CURING OF INFORMALITIES IN THE SUMMONS

[CONTRIBUTED]

Since the Sale of Food and Drugs Act, 1899, it has been a rule that every summons for an offence under the Act should (*inter alia*) both (*a*) be made returnable not less than fourteen days from the date of service and (*b*) be accompanied by a copy of the analyst's certificate. The present provisions will be found in s. 80 (3) of the Food and Drugs Act, 1938, and will be familiar to most readers. It is a good practice to check the point about returnability of the summons by providing a postcard to be completed with the actual date of service, and this will usually prevent the prosecuting solicitor being taken by surprise when the case is heard.

In spite of this it does sometimes happen that a summons is not made returnable in fourteen days (which must be clear days: *McQueen* v. *Jackson* [1903] 2 K.B. 163) or is served without the analyst's certificate. If this happens and is discovered too late to be rectified by re-service, what can be done to put the matters right? On this point *Stone*, 1949, at p. 978, note (*s*), is a little discouraging. It says: "if the statute was not complied with at the time of service of the summons it could not be done afterwards." *Bell's Sale of Food and Drugs* (12th edn., p. 196) holds out some hope if the analyst's certificate only is forgotten. But if the fourteen day rule is not observed, the note reads: "Failure to comply with the requirement concerning fourteen days is fatal and cannot be cured by an adjournment." In fact it is suggested that neither defect is fatal to the prosecution. Each is curable.

This problem was first considered in the case of *Batt* v. *Mattinson* (1900) 64 J.P. 615. Here the prosecution had excelled themselves by failing to serve copies of the certificates of analysis and by making the summons returnable in ten days. The reason for this was because the prosecution was mounted at that awkward time when the old Sale of Food and Drugs Act, 1875, had been repealed, and the new Act of 1899 had come into force. The major part of the judgments relate to the question whether or not the prosecution was to be governed by the old or the new law. At the conclusion of his judgment, however, Ridley, J., said this: "But turning to the present case the summons being made returnable less than fourteen days from the date of service is not a matter capable of amendment under Jervis's Act. It is a matter that *never can be put right*. Nor can the omission to serve a copy of the analyst's certificate be put right. If it was not done at the time of serving the summons, it cannot be done afterwards." It is on this that both *Bell* and *Stone* base their footnotes.

Batt v. *Mattinson, supra*, is the only case which has specifically considered the question of the returnability of the summons. All the other cases to be mentioned in this article relate to the non-service of the certificate of analysis. It is submitted, however, that their reasoning is equally applicable to the case of a summons not returnable in fourteen days. Both requirements are to be found in the same sentence in the same subsection of s. 80 of the Food and Drugs Act, 1938. The judgment in *Batt* v. *Mattinson* puts them both in the same category, and it is submitted that what is applicable to one is applicable to both.

Batt v. *Mattinson* was considered in the later case of *Grimble* v. *Preston* [1914] 1 K.B. 270. Here the facts were that no certificate of analysis was served with the summons. The summons was partly heard and was adjourned. On the adjournment one of the points raised was non-service of the analyst's

certificates. The justices over-ruled this contention subject to a case being stated. It was argued by counsel for the appellants that service of the certificate was a condition precedent to the justice's jurisdiction, and *Batt* v. *Mattinson* was relied upon in support of this.

One might have expected that, on the reasoning in the earlier case, it would have been held that the defect was incurable. Darling, J., however, said that the omission to serve was "an informality only which the party charged might waive, either by express words or by conduct." He was followed by Rowlatt, J., who said: "The fact remains that it is nothing more than a neglect to observe a formality accompanying service and if the party . . . waives such service the jurisdiction of the justices is not affected by the omission." The third judge, Atkin, J., said nearly the same thing: "the neglect to serve the copy . . . did not deprive the justices of jurisdiction . . ."

Grimble v. *Preston, supra*, was itself considered in *Haynes* v. *Davis* [1915] 1 K.B. 332 and Ridley, J., explained that case in this way: "In *Grimble* v. *Preston* it was held that it was too late to take objection after the appellant had appeared and disputed the case on its merits. The Court held that the justices had jurisdiction and that the statutory provision as to serving a copy of the analyst's certificate with the summons was a matter of procedure only. I think therefore that we must treat the absence of the analyst's certificate in this case as a mere informality in procedure."

In *Haynes* v. *Davis, supra*, the facts were that no certificate of analysis was served and the magistrate thereupon dismissed the summons. A second summons was then issued in respect of the same alleged offence. It was held (Lush, J., dissenting) that the defendant had been in peril on the first summons and his plea of *autrefois acquit* succeeded. The defendant, it was said, was in peril on the first occasion because if no objection was taken to the informality there was a possibility or probability of conviction.

Haynes v. *Davis* was followed by *Williams* v. *Letheren* [1919] 2 K.B. 262. Here a preliminary objection was taken before the magistrates by the defendants' solicitor, because no analyst's certificate had been served. Profiting by the previous decisions, the prosecution obtained an adjournment and thereupon applied for a *fresh summons upon the same information*. At the adjourned hearing the second summons was heard first and the original summons was later withdrawn. It was held that the justices could hear the second summons first in this way, and the defendant could not plead *autrefois acquit*. Lawrence, J., said: "In the present case the justices in adjourning the first summons, with which no copy of the analyst's certificate had been served, in order that a fresh summons might be issued which should comply with the statutory requirement, were acting in the interest of the appellant."

It is submitted that these cases justify the following propositions where a summons is defective by non-compliance with s. 80 (3) of the Food and Drugs Act, 1938:

(1) The defect is incurable in the sense that if the defendant takes objection to the lack of formality, there is no way of curing the matter *on the summons which has been issued*. As Rowlatt, J., said in *Grimble* v. *Preston*: "If the party take the objection, it cannot be got over by an adjournment."

(2) If the defect is waived either expressly by words or impliedly by contesting the case on its merits, the defect is apparently cured (*Grimble* v. *Preston*). The defect does not affect the justices' jurisdiction (*Haynes* v. *Davis*).

(3) If the defect is objected to, the matter is curable by the prosecution applying for leave to withdraw the first summons, and then issuing a fresh summons on the original information. This is the method suggested by Sherman, J., in *Williams* v. *Letheren, supra*, at p. 270. The summons can be withdrawn even if the defence objects (*Davis* v. *Morton* [1913] 2 K.B. 479). The justices have a discretion whether to allow the withdrawal of the summons, but in the interests of both justice and the defendant they should follow the views expressed in *Williams* v. *Letheren*.

There is only one passage in any of the judgments which gives difficulty. Atkin, J., in *Grimble* v. *Preston*, said: "It was an informality in the procedure which could not have been cured and would have entitled the appellants to have the case dismissed if the objection had been taken at once." We think, however, that this only means that the objection must result in the dismissal of the summons if the prosecution attempt, after the objection has been taken, to proceed upon the original defective summons.

J.S.B.

PERSONALIA

APPOINTMENTS

Mr. James Worsley Graham Richardson, assistant town clerk to the city of Wakefield, has been appointed legal assistant to the clothworkers' company. Mr. Richardson, who has been in the local government service for nine years, was previously deputy town clerk of Beddington and Wallington.

Mr. Charles Frederick Fletcher, deputy clerk to the Manchester county petty sessional division, has been appointed clerk to the justices for the county borough of South Shields. Mr. Fletcher served in the army during the war and then became clerk to the justices at Leamington Spa. He is thirty-four years of age and was admitted in 1942.

Miss Phyllis E. Tyrer has been appointed a probation officer for the Lancashire No. 4 combined probation area which comprises Blackburn, Accrington, Darwen, Church and Clitheroe. Miss Tyrer, who was formerly a teacher, has had experience as an assistant probation officer in Cumberland. She is twenty-five years of age. Miss R. V. Kent and Mrs. M. A. King, at present serving as part-time officers, will relinquish their appointments at the end of January. Miss Kent has been a probation officer for Blackburn borough since 1943 and Mrs. King for Blackburn county since 1938.

NEW COMMISSIONS

KING'S LYNN BOROUGH

Leonard Wilfred Allanson Barrett, Pleasant House, Gaywood, King's Lynn.
Bernard Eustace Bremner, 284, Wootton Road, Gaywood, King's Lynn.
Frederick George Jackson, 20, Jermyn Road, Gaywood, King's Lynn.
William Joseph Parton, 51, Saddlebow Road, King's Lynn.
Alfred Valentine Speed, 89, High Street, King's Lynn.
Miss Enid Howard Vickers, 87, Gaywood Road, King's Lynn.

MONMOUTH BOROUGH

Robert Henry George, 9, Victoria Estate, Monmouth.
Miss Agnes Ferguson McDonald, Monmouth School for Girls, Monmouth.

WISBECH BOROUGH

Mrs. Fanny Sybil Elgood, 71, North Brink, Wisbech.
Herbert Stanley Wakefield, 34, Summerfield Close, Wisbech.
Herbert Arthur Haile, 144, Norwich Road, Wisbech.

YORKS (NORTH RIDING)

Charles James Cawood Beauvais, Hagg House, Pickering.
Mrs. Olive Bigge, Lingdale, Melsonby, Richmond, Yorks.
Ralph Sydney Butterfield, O.B.E., M.C., Highfield, Hexby, York.
Frederick William Chadwick, Beacon Park, Pickering.
Major John Davey Cook-Hurle, Startforth Hall, Barnard Castle.
Edward Cooper, V.C., 8, Park Avenue, Thornaby-on-Tees.
Carl Stanbra Coulson, High Street, Cloughton, Scarborough.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Somervell and Jenkins, L.JJ., and Romer, J.)

WILLIAMS v. CARDIFF CORPORATION

January 11, 12, 1950

Negligence—Trap for children—Tipping ground—No fencing

APPEAL by the defendant corporation from Cardiff and Barry County Court in an action for damages for personal injury.

The corporation was the owner of a piece of waste ground which was used for tipping rubbish and sweepings. The ground, which sloped down for eight feet and was littered with broken glass, was not fenced off, and children use to play there. The plaintiff, who was 4½ years of age, fell down the slope and injured his face on broken glass.

Held, a piece of waste land, littered with broken glass, from the point of view of an infant was a trap or concealed danger, and, therefore, the corporation was liable for the injury sustained by the plaintiff.

Counsel: *F. D. Walters* for the corporation; *David Pennant* for the plaintiff.

Solicitors: *Theodore Goddard & Co.*, for *Mr. S. Tupper Jones*, town clerk, Cardiff, for defendant; *Stikeman & Co.*, for *Phillips & Buck*, Cardiff, for plaintiff.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Sellers, JJ.)

R. v. ASHBORNE JUSTICES: *Ex Parte* MADEN

January 13, 1950

Summary Jurisdiction—Procedure—Proposal to hear two summonses together—Need to obtain definite consent from defendant

APPLICATION for an order of *certiorari*.

At a court of summary jurisdiction at Ashborne (Derbyshire) summonses for dangerous driving and for careless driving were preferred against the applicant, Marjorie Maden. There was a dispute whether the applicant was charged before the justices with the second offence, but the court accepted affidavits filed by the justices deposing that the second charge was put to the applicant and that she pleaded Not Guilty to it. It was common ground that in the course of the opening the second summons was referred to without any protest from the applicant's solicitor, and the court was satisfied that the two summonses were in fact heard together. The applicant was acquitted of dangerous driving, but was convicted of careless driving. She applied for an order of *certiorari* to quash the conviction on the ground that she had never been charged with, or heard in respect of, the offence.

Held, that where it is proposed to hear two summonses together the defendant should be asked in definite terms whether he consents to the two summonses being heard together and a definite answer should be obtained from him; that, even if an irregularity had occurred in the present case, it was not one that had resulted in any injustice, and that, therefore, *certiorari* would not lie.

Counsel: *C. Hodson* for the applicant; *Dineen* for the respondent justices.

Solicitors: *Hasking & Berkeley*, for *Bertram Mather & Co.*, Chesterfield; *Kingsford, Dorman & Co.*, for *H. Wilfrid Skinner*, Derby.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

COPPS v. PAYNE

January 12, 1950

Railway—Level crossing—Gate for accommodation of owners or occupiers of adjoining lands—Failure by person using to shut—Road originally occupation road—Subsequent change to highway repairable by inhabitants—No duty on railway authority to provide person to shut gates—Railways Clauses (Consolidation) Act, 1845 (8 and 9 Vict., c. 33), ss. 46, 47, 68, 75.

CASE STATED by Essex justices.

At a court of summary jurisdiction an information was preferred by the appellant, James Edwin Copps, a constable in the Railway Executive police force, charging the respondent, Basil Payne, with failing to shut and fasten a gate set up at the side of the railway for the accommodation of the owners or occupiers of adjoining lands, contrary to s. 75 of the Railways Clauses (Consolidation) Act, 1845. Gates were set up on either side of the railway in question where a road and public footpath crossed it, and each gate carried a notice to the effect that failure to close it entailed a penalty of 40s. The road and footpath led off directly from the public highway and ran to Borley Hall and Mill only. At the time when the railway was built the road was an accommodation road for the use of the owners or occupiers of Borley Hall and Mill and the gates on either side of the railway were set up pursuant to s. 68 of the Act of 1845 and the crossing was an accommodation crossing. The volume of traffic using the crossing had not materially increased or changed in character since the railway was built. The road was used only by vehicles owned by the owners or occupiers of Borley Hall and Mill or by persons having business with them. Until May, 1929, the railway company employed men to open and shut the gates between certain hours. By 1930 the road had become a road repairable by the inhabitants at large and was the responsibility of the highway authority. The justices found that by providing persons to open and close the gates the predecessors of the Railway Executive had relieved the respondent of the duty of closing the gates, and that, in consequence, the gates were not gates for the accommodation of the owners or occupiers of adjoining lands within the meaning of s. 75. They dismissed the information, and the prosecutor appealed.

Held, that there was nothing in the Act which suggested that an alteration in the character of the road would alter the obligation which was imposed at the time when the gates were erected, and that, as at that time they were erected for the accommodation of the owners and occupiers of adjoining lands, the obligation as regards opening and closing the gates was then imposed by s. 75, and continued to rest, on the persons using them. The appeal must, therefore, be allowed and the case remitted to the justices with a direction that the offence was proved.

Counsel: *T. F. Southall* for the appellant; *Hines* for the respondent.

Solicitors: *E. Coleby*, Regional Solicitor, Eastern Region, Railway Executive; *Frederick G. Perks*, for *Bates, Wells & Braithwaite*, Sudbury.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LINDLEY v. GEORGE W. HORNER & CO., LTD.

January 12, 1950

Food and Drugs—Adulteration—Proceedings against manufacturer—Nail in sweet—Defence available—Food and Drugs Act, 1938 (1 and 2 Geo. 6, c. 56), s. 3 (1), s. 4 (4), s. 83 (3).

CASE STATED by the Leeds stipendiary magistrate.

At Leeds magistrate's court an information was preferred by the appellant, Joseph Sydney Lindley, an inspector of food and drugs, under s. 83 (3) of the Food and Drugs Act, 1938, charging the respondents, George W. Horner & Co., Ltd., as the manufacturers of an article of food, namely, certain sweets, which were sold in contravention of s. 3 (1) of the Act in that they were not of the nature, substance, or quality demanded by the purchaser. A woman had bought the sweets at a shop, and found that there was a nail in one of them. The magistrate found that all due diligence had been used in the manufacture of the articles and dismissed the information. The prosecutor appealed. By s. 4 (4) of the Act it is a defence to proceedings under s. 3 to prove, where the food or drug in question contains some extraneous matter, that the presence of the matter was an unavoidable consequence of the process of collection or preparation.

Held, that s. 4 (4) had no relation to the facts of the present case, and that, as the presence of the nail was due to the act or default of the manufacturers and an absolute duty was imposed on them by s. 3 (1), they had no defence to the information, and the case must be remitted to the magistrate with a direction that the offence was proved.

Counsel: *Vernon Gattie* for the appellant; *Fenwick, K.C.* and *Norman Harper* for the respondents.

Solicitors: *Sharpe, Pritchard & Co.*, for *O. A. Radley*, town clerk, Leeds; *Hyde, Mahon & Pascalls*, for *Wilkinson* and *Marshall*, Newcastle-upon-Tyne.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

TRAVELLING EXPENSES OF RELATIVES VISITING HOSPITAL PATIENTS

The December issue of *Municipal Review* refers to correspondence which has taken place with the Minister of Health regarding a circular issued by the Ministry to local health authorities on this subject last September. The view was expressed in the circular that it would be open to a local health authority, within the scope of its arrangements under s. 28 of the National Health Service Act for the care of persons suffering from illness, to provide travel warrants to enable near relatives to visit patients in hospital at a considerable distance from home, where it is satisfied :—

> (1) That because of the length of the journey the relatives concerned are unable to afford it from their own resources without special hardship, and (2) that there is urgent reason for the visit because of the patient's serious condition, or that the visit would in medical opinion do the patient good and aid response to treatment—as, for example, in the case of a long stay tuberculous patient too far from home to be readily visited by husband, wife or parent.

The attention of the Association of Municipal Corporations was drawn to the matter by the town clerk of Coventry who expressed the view that consideration did not appear to have been given to this type of payment when the new legislation was drafted and, in order to provide anybody with the necessary authority to make these payments, the statutory provisions must be stretched. It seemed to him that there was a possible choice of three bodies, namely, the appropriate Regional Hospital Board, the Assistance Board and the appropriate local authority. The association has expressed the opinion, which is supported by the County Councils' Association, that local authorities should not be expected to pay travelling expenses of relatives visiting hospital patients and it was decided to seek an interview with the Ministry.

CRUELTY TO CHILDREN

We regret that owing to shortage of space we have been unable to refer to the debate, initiated by Mrs. Ayrton Gould in the House of Commons, on December 12, 1949, before the present time. Mrs. Gould's motion read : " That, in view of the many cases of cruelty and neglect of children which were not included in the terms of reference of the Curtis Committee, this House calls upon the Government to appoint an official committee to inquire into the extent of the evil and make recommendations for effective prevention and remedial treatment."

The motion, which had been put forward on behalf of a group of Conservative, Labour and Liberal Members, was seconded by Mr. Somerville Hastings, and supported in the debate by members of all parties. Mrs. Gould said that one of the most serious aspects of the problem of child neglect and cruelty is the means of ascertaining the number of children who are seriously neglected and ill-treated. She felt that the powers of the National Society for the Prevention of Cruelty to Children were limited and that very often their inspectors were frustrated, although she paid a tribute to them and to the very fine work which has been done by the Society for many years. In view of the difficulty and perplexity of the problem there is a feeling that an investigation by thoughtful and responsible people of varied experience and qualification is the right way to help to solve it. It was suggested, therefore, that a committee similar to the Curtis Committee, should be set up to inquire into the conditions of children in their own homes ; to inquire how ill-treatment and serious neglect can be prevented and what should be done along the lines of prevention and what can be done in the way of remedy.

Mr. Somerville Hastings mentioned that in connexion with health, the tactful health visitor visits homes in cases of all types of sickness, and gives any advice that may be necessary ; but the welfare of a child is just as important as its health, and homes, where necessary, should be investigated. At the present time, so far as he knew, there is no statutory authority on whom the duty is laid of protecting children in their own homes who appear to be neglected there. He felt, therefore, that an inquiry should be made as to what can be done, and in this connexion referred to the home advice services which have been instituted in the city of Norwich and to the Family Service Unit ; and as to whether there ought not to be in every area some authority, well known to all those who are interested in children and who have their care, to whom even a suspicion of neglect or ill-treatment could be reported. It would then be necessary that there should be a careful and tactful inquiry by some officer, and if there was evidence of either cruelty or neglect the case would have to be dealt with. If, however, a case is recognized in good time it could generally be dealt with without recourse to the law. Mr. Hastings also referred to another type of case, that of an unwanted child who was passed over directly by its mother to some other person, which he thought should be the subject of an inquiry.

Sir Ronald Ross intervened in the debate because of his membership of the executive committee of the National Society for the Prevention of Cruelty to Children. He mentioned that the Society was started sixty-five years ago, before the country was conscious of the needs of children. In 1901, the Society instituted 2,884 prosecutions. In 1922, the prosecutions had come down to under 1,000 ; in 1949 they numbered 626, up to the last convenient date, and 442 cases in the juvenile courts. He emphasized that prosecution is only the ultimate weapon and that of the cases investigated by the Society only *two per cent.* resulted in prosecutions. On the question of the necessity for further action, he thought the machinery already existed, but whether more legal rights should be given to whatever officer or person is investigating a case of child neglect or ill-treatment was a matter which he did not propose to discuss beyond saying that the right of entry into people's homes is a very serious step to take. He thought the Society's inspectors are fairly successful in their investigations. In the course of one year over 10,000 cases were reported to the Society by officials of one sort or another, apart from the 3,000 to 4,000 cases to which the Society's attention was drawn by the police.

Lady Megan Lloyd George said that no tribute could be too high for the N.S.P.C.C., but she felt that in spite of their work and in spite of legislation already passed by Parliament, the problem still remains virtually untouched. Mrs. Nichol who, like Mr. Somerville Hastings, was a member of the Curtis Committee, rather deprecated the inquiry apparently because of the lack of trained staff who would be available to undertake any further investigation work which might be recommended by a new committee. This view was, however, resisted by other members who took part in the debate. Mrs. Middleton referred to the experiment in Plymouth which had been started by the Salvation Army, under which a home had been established where mothers and children could be taken in cases of child neglect. There they are training the mothers in how to manage both the home and the children and how to overcome the many difficulties with which they are faced. It seemed to her that only in remedial work of this kind will the solution of the problem be found.

The Secretary for State for the Home Department (Mr. Ede) in replying for the Government, expressed pleasure that the debate had been conducted on a non-party basis, with a general consensus of opinion that this is a subject which merits the attention of the House of Commons and of the Government. Referring to prosecutions, he mentioned that in the first ten months of 1948, thirty-two cases were dealt with at assizes and quarter sessions and 849 cases were dealt with in magistrates' courts, making a total of 881 cases. He was glad to say that in the first ten months of the year, although public attention had been focussed on the subject, the numbers were sixteen cases at quarter sessions and assizes, and 705 in magistrates' courts, making a total of 721. He did not produce these figures in any spirit of complacency as 721 cases are far too many and they indicate the nature of the problem. He expressed his disappointment that so little use has been made of the excellent work which has been started by the Salvation Army at Plymouth, and mentioned that he sent a circular to all magistrates' courts commending this home, and suggesting that the neglectful mother who was obviously capable of improvement should have it made a term of her probation that she attends the home. An effort was made to start a similar home in London. For two or three months no cases were sent to Plymouth at all and, since the home started earlier that year, only twenty mothers had been sent. Fourteen are recorded as being below average. The people in charge of the home have stated that the women have all been judged to be loving mothers and faithful wives but thoroughly incompetent housekeepers. Turning to the demand for a committee, Mr. Ede said that as the result of a debate in the House on this subject last July, he set up a working party inside the Home Office which in addition to members of his own department, has members of the staff of the Ministry of Education and of the Ministry of Health to investigate the problem and particularly the extent to which the existing law is not being used when it might be used. He felt that some of the cases which had been mentioned in the debate appeared to be suitable for action under the existing law and, for instance, that s. 40 of the Children and Young Persons Act, 1933, is a great deal more capable of being used than would appear to be the case. He said the working party is having the ground very carefully surveyed and he hoped shortly that he would get from it a report on the grounds to be covered, on the specific parts of the law which at present are not being adequately used and on the gaps which exist in the law, which the debate and the state of the public conscious reveal as being in need of attention by the legislature. He was able, therefore, to accept the motion as drafted and if it was found that the

working party could not adequately cover the situation, he would respond to the feelings of the House that no time should be lost in dealing with the matter by the appointment of some kind of committee.

On the day of the debate there was a very long letter in *The Times* from the Rev. W. N. McCann, Director of the N.S.P.C.C., in which he appeared to deprecate any further inquiry, as he claimed that the necessary machinery for dealing with possible cruelty already exists in the work of the Society, backed by 40,000 honorary workers in all parts of the country, continuing after sixty-five years' experience to do work today within the homes of the people which "no fresh battalion of government officials could possibly do." On the suggestion in the motion that means for effective prevention and remedial treatment should be sought for, he claimed that the N.S.P.C.C. "are doing the job." In the course of the House of Commons debate, Mr. Godfrey Nicholson said the main field for an inquiry was as to the boundary line between official action and voluntary action. Brigadier Prior-Palmer, in supporting the motion, emphasized that it was in no way an implied or actual criticism of the way in which the voluntary societies, particularly the N.S.P.C.C., have operated over such a long period. But, in his view, despite the magnificent work of the voluntary organizations, the situation is still far from satisfactory. Mrs. Leah Manning said that with all respect to the work being done by the Society it was "not good enough, had not the powers and had not the money to deal with this problem." Mr. Lipson, after referring to the valuable work of the Society, expressed the view that "they ought to be among the first to welcome this inquiry, because they have been pioneers." The Home Secretary in his concluding remarks recognized that the Society is a very valuable voluntary organization, but he was inclined to agree with Mrs. Manning that "with their existing staff they have reached the limit of their usefulness, and the ground that they can cover is not by any means all the ground that might be covered, and should be covered by such an organization." For instance, the half a million visits made by the 270 inspectors worked out at 1,850 visits per inspector *per annum*, which gave six minutes a day. This shows that they were quite fully employed.

NEW BIBLIOGRAPHICAL SERVICE

All who must keep abreast of current legislation should benefit from an important new bibliographical service to be inaugurated by His Majesty's Stationery Office on January 1. Following discussions with the University and Research Section of the Library Association (London Group), the Stationery Office will supply index cards to official publications, so that librarians may maintain their card catalogues completely up-to-date. The service, available to the libraries at a moderate annual rate, will cover all government publications, including not only the normal parliamentary and non-parliamentary series, but also statutory instruments. The cards will be posted to the libraries in daily, or weekly, batches as required and should be available for despatch within two days of publication. Space will be left on the cards for the participating libraries to add their own headings and references.

NORTHERN IRELAND ROAD ACCIDENTS

Accompanying the Northern Ireland road accident returns for October is a statement by the Ministry of Commerce which points out that during the ten-month period ending October 31, 1949, there were thirty-nine accidents attributable to passengers boarding or alighting from buses, trolley buses and tramcars while the vehicles were in motion. As a result of these accidents, two persons were killed and thirty-seven injured.

During October, fifteen people were killed and 209 injured in 190 accidents. This compares with sixteen killed and 233 injured in 188 accidents in September, and twelve killed and 162 injured in 150 accidents in October, 1948. Children under fifteen years who were killed or injured totalled fifty-four of whom eleven were under the age of five years.

Of the total number of accidents, sixty-four were attributable to pedestrians, twenty-four to pedal cyclists, forty-nine to drivers of motor vehicles, five to drivers of other vehicles, eleven to motor cyclists, nine to passengers and twenty-eight to other causes, including mechanical defects, weather conditions, etc.

The following is a classification of those killed and injured: Pedestrians, six killed, eighty-nine injured; pedal cyclists, four killed, thirty-eight injured; drivers of motor vehicles, seventeen injured; drivers of other vehicles, one killed, one injured; motor cyclists, three killed, eighteen injured; pillion passengers, five injured; passengers, one killed, forty-one injured.

REVIEWS

The Householder and the Law. By Reginald M. Lester. Oxford: The Pen-in-Hand Publishing Co., Ltd. Price 4s.

We gather that this work is one of a series from the same publishing house, normally published at 4s. The publishers' announcement justly points out that many householders, whether they are tenants or owners, are not at all sure of their liabilities and rights or of the procedure to be followed to secure their rights. The book is written specifically for the layman, and perhaps for this reason is free from references to decisions or the statute law. This makes it difficult to check particular statements. We cannot say that we think a book of this sort well advised. We may, for example, take the chapter called "Some boundary problems." This deals with party walls, fences, overhanging trees, hedges, and the like, and, whilst it may be a good thing to remind property owners and occupiers of the complexity of the law upon these matters, or upon fixtures and fittings and so forth, it seems to us that almost every statement in the book needs to be expanded or qualified, in a manner which can only be done by a person with a legal knowledge considering particular facts. We are not suggesting that the householder's 4s. will have been badly expended if he gets the book, but we do not think it will carry him much further in his relations to his landlord, his tenant, or his neighbour.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CLEANLINESS OF FOOD

My attention has been drawn to an article on "Cleanliness of Food" which appeared in the *Justice of the Peace* on December 31, 1949. The writer of the article states that he is not sure from what source I obtained my figure of 5,000 deaths a year from food infection. My estimate is as follows:—

(*a*) 1,500 to 2,000 deaths occur annually in children from bovine tuberculosis due to the consumption of milk infected with tubercle bacilli. (Professor G. S. Wilson.)

(*b*) 200 deaths *per annum* from typhoid and paratyphoid fevers, dysentery and notified food poisoning. (Annual Report, Ministry of Health.)

(*c*) There were 5,860 deaths from diarrhoea and enteritis in 1947 and of these 3,900 were in respect of children in the first two years of life. (Annual Report, Ministry of Health.) Not all of these deaths were due to food infections but it is estimated that 3,000 were due to this cause, and it is significant that only one of every ten children admitted to hospital suffering from this condition were breast fed.

The writer then states that the figure differs startlingly from those given in the House of Commons, *viz.*: 964 "cases of food infection" in 1948 and 246 deaths from 1937 to 1946 inclusive.

Quoting from *Hansard*, Mr. Skeffington-Lodge said:—

"The incidence of food poisoning in this country is really alarming; 3,270 outbreaks were reported between 1938 and 1947. In 1938, the recorded figure was 156 cases. Last year, it was 964. As one single case can, and very often does, involve several hundred persons, the extreme importance of what I am saying should, I think, be clear to the House.

At one time deaths from food poisoning were very rare. The returns of the Registrar-General during the ten years 1937-46 record no fewer than 246 actual deaths due to this cause, and there is, I believe, reliable authority for the view that food poisoning generally—comprising both reported and unreported cases—is at least three times what it was before the war."

You will observe that I was referring to food infections whereas Mr. Skeffington-Lodge was referring to food poisoning. Upon the question whether the increase in outbreaks of food poisoning should be regarded as due to the increase in communal feeding, I thought that all authorities on the subject were agreed that this was one of the main factors. Careless food handling in the home may cause a small outbreak but carelessness in food handling at a restaurant kitchen may cause several hundred cases. The former usually passes unnoticed but the latter seldom does so.

Yours faithfully,
W. B. STOTT,
Medical Officer of Health.

Cuckfield Urban District Council,
Oaklands,
Haywards Heath.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 7

THE TRIBULATIONS OF AN AMBULANCE DRIVER

The driver of an ambulance taking a pneumonia case to hospital appeared recently before the Bristol magistrates charged with driving a motor ambulance on a road in Bristol without due care and attention, contrary to s. 12 Road Traffic Act, 1930, as amended by s. 5 (2) of the Road Traffic Act, 1934.

For the prosecution evidence was given that the defendant drove his ambulance at high speed on the Bridgwater-Bristol road within the thirty m.p.h. limit area; his ambulance collided with three private cars, swerved and then overturned. The prosecution witnesses all stated that they did not hear the ambulance bell or horn.

The defendant, who pleaded not guilty, gave evidence. He stated that a form he was given instructing him to convey a pneumonia patient to the local Children's Hospital was marked "Urgent" and that this was the sole reason for his speed. He added that he was travelling at about forty m.p.h. overtaking a line of traffic and that his assistant was ringing the ambulance bell which was audible over a distance of 200 yards. He expected approaching traffic to give him the right of way in these circumstances. He had not driven this particular ambulance before and was unaware of the fierceness of the brakes which when applied fully, in fact caused the vehicle to swerve to one side.

It was further stated that the defendant had ten years' experience, including driving ambulances throughout the war, and he had a clean record.

The justices convicted, and fined the defendant £3, and added, that in the circumstances, they would not endorse defendant's licence.

COMMENT

It was put to the defendant in cross-examination that an ambulance, even when on duty, may not be driven at more than thirty m.p.h. but this misconception was dissolved by the learned clerk who drew attention to the provisions of s. 3 (1) of the Road Traffic Act, 1934.

This section, it will be recalled, specifically provides that enactments imposing a speed limit on motor vehicles shall not apply to any vehicle which is being used for fire brigade, ambulance or police purposes if it is likely to hinder such vehicle.

Permission to exceed thirty m.p.h. limit did not, however, carry with it permission to drive carelessly, and the court found upon the facts stated above that the defendant had been careless.

It is impossible not to feel some sympathy for the defendant in this case, and it is clear that the justices who adjudicated felt similarly, for their penalty was a modest one having regard to the fact that they could have fined him £20 under the powers conferred on them by s. 113 (2) of the 1930 Act.

It will be remembered that s. 5 (1) of the 1934 Act makes it obligatory for the court to order an endorsement on the licence of a driver convicted of careless driving unless for any special reason the court think fit to order otherwise.

The words "special reason" need no explanation in view of recent decisions but it is interesting to note that in this case the justices were satisfied that special reasons were present which were applicable rather to the nature of the case than to the defendant personally.

Mr. Orme, the Clerk to the Bristol Justices, to whom the writer is greatly indebted for this report, mentions that the reasons to which the justices gave weight were:—that the ambulance was being used for official duties; that defendant had every reason to think he must convey his patient to hospital as quickly as possible; that by ringing his bell he had reason to suppose that other traffic would be aware of the approach of an ambulance and that he was not fully aware that his brakes were so fierce that they would cause the vehicle to swerve when applied.

R.L.H.

No. 8

CARVING NAMES ON A PRIORY WALL

The Brampton (Cumberland) Justices recently heard a case in which a twenty-two year old bearing engineer and an eighteen year old apprentice were charged under s. 14 (1), Criminal Justice Administration Act, 1914, with maliciously committing damage to Lanercost Priory, to the extent of £4.

Evidence was given for the prosecution that the defendants carved their names on the wall of the twelfth century spiral staircase of the Priory.

The justices convicted. Each defendant was fined 10s., ordered to pay £1 restitution and to pay £1 costs.

COMMENT

We all have our pet prejudices and the writer admits frankly that people who deface historic or beautiful buildings by carving or writing their utterly undistinguished names upon them are amongst those members of the community to whom he would not temper justice with mercy.

This type of offence has become a disease in this country and it is respectfully suggested that when, as here, it can be brought home exemplary punishment should be meted out so that trippers may ponder awhile before busily drawing knives from their pockets during the coming summer holidays.

The section under which the proceedings were brought provides, where the amount of the damage is less than £5, for a maximum penalty of two months' imprisonment or a fine of £5 and there is therefore ample power put into the hands of magistrates with which to mark sharply their dislike of this unfortunate custom. (The writer is indebted to Mr. G. S. Cartmell, Clerk to the Brampton Justices, for information in regard to this case).

R.L.H.

PENALTIES

Wolverhampton Quarter Sessions—December, 1949—embezzling (18 charges)—two years' imprisonment. Defendant, aged forty-eight, the accountant-cashier of a limited company receiving a salary of £900 a year, attempted defalcations amounting to £1,191. He stated he had lived beyond his means.

Taverham—December, 1949—(1) being in possession of a gun and a hen pheasant, (2) killing game without a licence—(1) fined £1. (2) fined £1. Gun and pheasant confiscated.

Norwich Quarter Sessions—December, 1949—common assault—nine months' imprisonment. Defendant, a thirty-one year old labourer, was acquitted of assault with intent to ravish and of indecent assault. He was seen struggling at night with a young woman who was a total stranger to him. Defendant had previous convictions including two for indecent assault.

Newchapel, Pembrokeshire—December, 1949—stealing eight rabbits valued at 15s., the property of the Railway Executive—fined £100. Defendant, a railway guard with thirty-seven years' service, was stated to have borne an unblemished character.

Bradford Quarter Sessions—December, 1949—stealing postal drafts—two years' imprisonment. Defendant, aged forty, stole the drafts while employed as a postman. He asked for fifty-four similar offences to be taken into consideration; the total sum involved being £165. Defendant had exemplary Army character.

Hull Quarter Sessions—December, 1949—embezzling two petrol coupons, one for two gallons and the other for three gallons—fined £100. Defendant, a chief inspector of police aged forty-nine, received the coupons as officer in charge of the police transport department. Defendant had thirty years' service with the police and was about to retire having obtained an appointment as petroleum enforcement officer at Hull.

Edinburgh Sheriff Court—December, 1949—selling liver sausage in excess of the maximum price—fined £15. Defendant, a pork butcher, sold one pound of liver sausage for 2s., the permitted maximum price being 1s. 5d. Three previous offences were admitted.

London Session—December, 1949—(1) stealing a fur coat valued at £300 from a dwelling-house, (2) stealing two strings of pearls value £50 and twenty-three ration books—eighteen months' imprisonment. Defendant, a thirty-two year old engineer, had six previous convictions.

Salisbury—December, 1949—driving without due care and attention—fined £4. To pay £1 16s. 2d. costs. Defendant, a sixty year old justice of the peace on the supplemental list, failed to conform with a "halt" sign as a result of which his car collided with another.

Oxford—January, 1950—assaulting a policeman in plain clothes—fined £2. To pay £1 5s. costs. Defendant, a bricklayer, was endeavouring to enter a dance held at the Town Hall without a ticket. The policeman, who was off duty and attending the dance in plain clothes, asked defendant to move aside. Defendant then struck the policeman a glancing blow on the cheek. Defendant said he had drunk too much whisky.

Rhyl—January, 1950—assaulting a policeman—fined £20. Defendant, a twenty year old painter, was prevented by a policeman from entering a dance hall. He then struck the officer a blow above the left eye necessitating medical attention.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Single woman—Married woman alleging her marriage bigamous.*

Mrs. A has applied to me for the issue of an affiliation summons. Her solicitor contends on her behalf that she is entitled to be regarded as a "single woman" within the meaning of the Bastardy Acts, because, it is alleged, the person with whom she went through a form of marriage, was then married and his wife was (and still is) alive. The matter has been reported to the police but they inform me that after due inquiry they have decided to take no action. Her solicitor has informed me that he proposes to call evidence before my justices to prove that the marriage of his client was a bigamous one, but I have informed him that such evidence would be inadmissible and that unless, and until the marriage has been proved to be bigamous by a court of competent jurisdiction, or his client can establish her status on some other grounds, she cannot take any proceedings in bastardy.

I shall be glad if you will be good enough to inform me whether my opinion is correct. SAR.

Answer.

We think the summons may be granted, and the justices should hear the evidence in support of the allegation of bigamy. The question is not whether the marriage was entered into with guilty knowledge, but whether it was in fact invalid. In matrimonial cases it is not uncommon for a defence to be set up based on a bigamous marriage, as it is not considered necessary to prove any judgment to that effect, it being a matter of evidence.

2.—Criminal Law—*Fine on conviction of felony on Indictment—Criminal Justice Act, 1948, s. 13—Whether probation order can also be made.*

I shall be glad of your valued opinion on a point which appears to be causing considerable differences of opinion.

Section 13 of the Criminal Justice Act indicates that any court before which an offender is convicted on indictment of felony (not being a felony the sentence for which is fixed by law) shall have power to fine the offender in lieu of or in addition to dealing with him in any other manner in which the court has power to deal with him.

On reading this section it would appear that permission is given today to punish twice for the same offence. It has been contended that under this section a court dealing with a case of indictment could in addition to making a probation order fine the offender. Is this in fact so, for the section expressly includes the words "in addition to" dealing with him in any other manner? SONY.

Answer.

The court may make a probation order "instead of sentencing" the offender. It therefore seems incompatible to impose a fine and at the same time make a probation order. Moreover, although it is common for statutes to authorize punishment by both fine and imprisonment, for one and the same offence (e.g., Criminal Justice Act, 1925, s. 24) that is a single sentence which disposes of the case finally, and it would be contrary to general principles to impose a sentence, and also subject the offender to a liability to be brought up again and receive a second sentence for the same offence.

The words of s. 13 of the Criminal Justice Act, 1948, are wide, but we think they simply mean that a fine may be imposed in addition to some other authorized form of punishment or a binding over to keep the peace, but not in addition to a probation order. A probation order, like an order of conditional discharge, is really a suspension of sentence.

That, in the absence of any reported case, is the opinion at which we have arrived. We understand, however, that some courts of quarter sessions have imposed a fine and at the same time and for the same offence made a probation order. This shows the matter to be one which only an authoritative decision can settle, and inasmuch as we have heard that a judge has adopted the same procedure at assizes (though we have no report to go upon) we feel bound to express our opinion with reserve. If a judge has made such an order, it would be sufficient authority unless an appeal from his decision or from some other court to the Court of Criminal Appeal resulted in a contrary decision.

3.—Husband and Wife—*Order made in absence of husband—Husband appears later—Re-opening case.*

A issued a summons against B alleging desertion. When the case was called on the date and time specified on the summons B did not appear and the case was heard and an order was made in favour of A. Before the bench rose B and his solicitor, who had been delayed en route, appeared and asked for the case to be re-heard.

(*a*) Can the bench re-hear the case and dismiss the complaint on the evidence now before them, or

(*b*) with a view to reconciliation, can they adjourn the case for hearing on a subsequent date by the same or another bench?

S. "A.B.C."

Answer.

In our opinion, it would be wrong to treat the hearing as a nullity. It is true that justices sometimes alter a decision at the same sitting, and that where this is by way of mitigation of penalty it has been allowed to pass. Here the position is rather different. The wife has obtained a valid order, and we do not think it would be right to treat it as of no effect.

At the same time, it may have been no fault of the husband that he arrived late, and he must have some remedy. We suggest that a summons should issue, under s. 30 (3) of the Criminal Justice Administration Act, 1914, to show cause why the order should not be discharged. Both parties can then be heard. If the order is discharged, the wife can apply again for an order if she has still a ground for doing so.

The case of *Espin* v. *Espin* [1949] W.N. 404 should be consulted.

4.—Landlord and Tenant—*Furnished Houses (Rent Control) Act, 1946—Landlord and Tenant (Rent Control) Act, 1949—Security of tenure.*

Section 5 of the Act of 1946 normally protects an applicant for three months, unless the tribunal reduce that period, and they now have power under the Landlord and Tenant (Rent Control) Act, 1949, to grant extensions not exceeding three months at any one time. Where under s. 11 (2) of the Act of 1949 a tribunal directs an extension of less than three months after an original three months will that preclude a further extension, or must extensions be for the full three months to permit of further extensions? ATC.

Answer.

No; the period specified in the direction under s. 11 (2) (*b*) must not exceed three months but, when so specified, it is "the period at the end of which the notice takes effect by virtue of this section" within s. 11 (1), however short it be. The scheme of s. 11 is different from that of s. 5 of the Act of 1946, and the purport of fixing a period less than three months is not the same.

5.—Legality of Expenditure—*Loans to employees.*

I refer to the provision for the granting of loans to officers of a local authority for the purchase of new cars required for use in connexion with their duties made in para. 2 of appendix A of the relevant recommendations of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services, on p. 49 of the second edition dated June, 1949. I should be obliged if you would let me know whether, in view of the provisions referred to, your opinion as to the legality of such loans is still that contained in your reply to P.P. 12 at 112 J.P.N. 128. APT.

Answer.

Agreement between a local authority and its staff cannot legalize expenditure which Parliament has not given the local authority power to incur. The above-mentioned scheme of conditions of service recommends, as one method of ensuring that local government officers are provided with cars for use on duty (though there are alternative recommendations), an assisted purchase scheme by way of advances on loan to the officers. This is set out with business-like particularity, but without, unfortunately from our point of view, indicating what is the legal authority for the making of such advances. We can only say that we know of no legal authority for them.

6.—Magistrates—*Practice and procedure—Appeal to justices from decision of local authority—Speeches for parties.*

A petty sessional court recently heard appeals against the proposals of a rural district council to provide a parking place for vehicles, under s. 68 of the Public Health Act, 1925. After argument the bench agreed that the procedure should follow the lines of appellate procedure in the superior courts and gave the advocates opposing the council a right of reply at the conclusion of the case and speech for the council.

I shall be glad to have your learned opinion as to whether this was within the powers of the petty sessional court, bearing in mind r. 58

of the Summary Jurisdiction Rules, 1915, and also s. 300 of the Public Health Act, 1936. Is it not fundamental in a court of summary jurisdiction that there should be but one speech for each party? SUR.

Answer.

In our opinion, the parties had the right to make one speech only, save that on a submission of a point of law the other party is entitled to be heard in reply. The matter is governed by r. 58, *supra*, and s. 14 of the Summary Jurisdiction Act, 1848.

It sometimes happens that the bench would like to hear counsel or solicitor a second time, in order to clear up some point, and we do not think this objectionable if the court is careful to see that the other advocate has an opportunity also of dealing with the point.

It will be noted that s. 42 of the Criminal Justice Act, 1948, does not affect this question, being limited to cases relating to offences.

7.—**Milk and Dairies Regulations, 1949**—*Farmer registered in one district selling in another—Position if he also buys milk in second district.*

A farmer A is registered as a dairy farmer in district Y where his farm is situated. If he also sells his milk in district Z, do you agree that as he is, even in district Z, "trading at or from premises in relation to which he is registered as a dairy farmer," notwithstanding that those premises are in district Y, he is not required to be registered as a distributor by the council of district Z? Would the position with respect to the registration of farmer A be any different if, on entering district Z, he bought milk from farmer B (by arrangement with the Milk Marketing Board) in district Z and retailed in district Z, either (*a*) only this milk or (*b*) both this and some of his own milk?

Your views on this matter will be much appreciated. S. MILKO.

Answer.

In our opinion, so long as A trades only from his own premises registered at Y he need not also register at Z. If, however, he buys milk in Z and proceeds to sell it, we do not think this is still trading from Y only, and consequently we think he ought then to register at Z: *see* article 8 of the Regulations and definition of "distributor."

8.—**Probation**—*Records—Custody of.*

Until the Criminal Justice Act, 1948, came into force, it was necessary for probation case papers to be filed at the court which made the order. I am unable to find in the 1948 Act, or the Rules, any clear statement of where the records are now to be filed after the termination of the period of probation. Should they be filed in the office of the probation officer for the supervising court, where, in fact, the person would be living, or should they be returned to the probation officer for the court where the order was made? SKI.

Answer.

Rule 32 (2) of the Probation Rules requires the probation committee to ensure the keeping of the records in proper custody. Reading the provisions of the statute and the Rules as a whole, we think it is intended that the probation committee referred to is to be that which exercises control over the probation officer who has had the case under his supervision. Probably it will be found convenient to have the records kept in a place of security in the office of the probation officer.

9.—**Real Property**—*Purchase by local authority—Stamping of deeds.*

I shall be glad if you will refer me to any authority imposing on a purchaser, mortgagee, or other person in whose favour a deed is executed, and in whose possession the deed will remain, an obligation to have the deed stamped. I am aware of s. 14 of the Stamp Act, 1891, which provides that a deed shall not be given in evidence, "or be available for any purpose whatever," unless it is duly stamped, but this does not appear to me to impose an obligation to have it stamped so as to make it an offence not to do so. It occurs to me that the purpose of stamping is to enable the document to be used in evidence "or be available for any purpose whatever," but provided the document is not used in any way, but merely kept in the custody of the person in whose favour it is made, it would not be required to become "available for any purpose whatever." This means that the only occasion on which the lack of a stamp could be questioned would be in court proceedings or when using the document in connexion with any dealings with the property to which it relates. If, as in the case of a local authority, large areas of land are acquired, most of which will never be dealt with, but will remain in the ownership of the authority, and the deeds relating thereto will merely be kept in safe custody and never used, there appears to me to be no purpose in stamping conveyances to the authority nor any obligation to do so. The deeds would normally not require to be used by anyone outside the authority's staff, and therefore the lack of a stamp could not be questioned until property to which a conveyance relates is either dealt with or becomes the subject of litigation. It would therefore seem that the stamping of conveyances to a local authority involves an unnecessary expenditure of large sums of money, when a cheaper course, and as far as I have been able to ascertain a legal one, would be not to stamp any conveyances to the purchasing authority, except such as may be used in dealing with a particular property or in litigation. The payment of the penalty in these exceptional cases would still incur considerably less expenditure than the stamping of all conveyances and deeds as a matter of course. I shall therefore be glad to be referred to any statutory provision which makes it an offence not to stamp a document which will merely be kept in the possession of the person in whose favour it is made. AST.

Answer.

Section 12 of the Stamp Act, 1895, applies wherever the purchase is under statutory powers, and is completed by a conveyance. Section 15 of the Stamp Act, 1891, should also be noticed. Section 12 is quite general, and may well have been designed, in part, to defeat such a project for inflicting loss upon the national revenue as is here suggested. Its generality has been modified by recent statutes dealing with town planning and the nationalization programme, but not in regard to local government purposes. We do not forget that Lord Lindley's speech in *Corporation of Eastbourne* v. *A.-G.* (1904) 66 J.P. 393 spoke of the section as "confined and meant to be confined to purchases expressly authorized by some special Act of Parliament," as the Eastbourne purchase was. But the argument he was there confuting was that the section did not apply to personalty, and the answer to the *dictum* cited can be given in the Lord Chancellor's vigorous language in the previous column: "It is not true." Collins, M.R., in the Court of Appeal (66 J.P. 36) and Kennedy and Phillimore, JJ., in the Divisional Court, all analysed s. 12, and gave no hint of its being limited as between one statutory power and another or one purchase of realty and another.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

SURREY COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor on A.P.T. Grade VII (£635 x £25—£710), plus London Allowance. The person appointed will assist in the conveyancing, advocacy and general legal work in the Department of the Clerk of the County Council. Applicants must have had advocacy experience and possess a sound knowledge of conveyancing. The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, the Staffing Regulations of the Council and the passing of a medical examination. Applications for the appointment stating age, and full details of experience and present salary, accompanied by one recent testimonial and the names and addresses of two referees, must reach the undersigned not later than February 14, 1950. Canvassing will disqualify.

DUDLEY AUKLAND,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

LEXDEN AND WINSTREE RURAL DISTRICT COUNCIL

Appointment of Clerk and Solicitor

APPLICATIONS are invited for the office of Clerk and Solicitor to the Council from Solicitors with experience of local government law and administration.

The person appointed will be required to devote his whole time to the statutory and other duties of the office and such other duties as may be assigned to him by the Council from time to time.

The appointment will be subject to the Conditions of Service contained in the Second Schedule to the Memorandum of the Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks dated September 8, 1949, and to the provisions of the Local Government Superannuation Act, 1937, and will be subject to the successful applicant passing satisfactorily a medical examination.

The commencing salary will be £1,150 per annum rising by four annual increments of £50 each to £1,350 per annum.

The appointment will be determinable by three months' notice on either side.

All fees except fees paid to him as Returning Officer at local elections and as Assistant Registration Officer for the purpose of the preparation of the Register of Electors shall be paid into the Council's account.

Applications, stating age, present appointment and experience, with copies of three recent testimonials to be received by me not later than February 13, 1950.

Canvassing of the members of the Council will disqualify.

G. E. TOMPSON,
Clerk to the Council.

Rebow Chambers,
Sir Isaac's Walk,
Colchester.

CITY OF BRADFORD

Assistant Solicitor

APPLICATIONS are invited for the appointment of First Assistant Solicitor in the office of the undersigned at a Salary within Grade X (£850-£1,000) of the National Scale of Salaries.

Experience in the application of the law relating to Highways, and Public Health and Police matters is desired and previous municipal experience is essential. The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. Applications, endorsed "Assistant Solicitor," stating age, qualifications and experience, accompanied by a copy of one recent testimonial and giving the name of one reference, should reach the undersigned not later than February 8, 1950.

Canvassing will disqualify and an applicant who is related to a member of, or to a senior officer of the Council must disclose the fact in his application.

W. H. LEATHEM,
Town Clerk.

Town Hall,
Bradford.

CITY OF WINCHESTER

Deputy Town Clerk and Deputy Clerk of the Peace

APPLICATIONS are invited for the appointment of Deputy Town Clerk from Solicitors having Local Government experience. The successful applicant will be required to act as Deputy Clerk of the Peace.

The inclusive salary will be £760 per annum, rising by annual increments of £25 to £860 per annum. The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and a satisfactory medical examination, and will be determinable by one month's notice. It is anticipated that housing accommodation will be let to the person appointed if required.

Applications, giving full details of experience and present and previous appointments, together with the names of three persons to whom reference may be made, must reach me by February 11, 1950.

R. H. McCALL,
Town Clerk.

Guildhall,
Winchester.

BOROUGH OF BEDDINGTON AND WALLINGTON

Deputy Town Clerk

APPLICATIONS for this appointment (to become vacant by promotion early in March) invited from Solicitors with adequate local government experience.

Salary: £715/£50/£915 (consolidated). The Council may agree commencing point above the minimum in an appropriate case.

Form and further particulars sent on request. Closing date Tuesday, February 14, 1950. Canvassing disqualifies.

C. PETER CLARKE,
Town Clerk.

Town Hall,
Wallington,
Surrey.
January 24, 1950.

COUNTY BOROUGH OF MIDDLESBROUGH

Full-time Female Probation Officer

APPLICATIONS are invited for the above appointment. The appointment will be subject to the Probation Rules. The successful candidate will be required to pass a medical examination.

Applications stating age, qualifications and experience, with copies of not more than two recent testimonials, must reach the undersigned not later than Thursday, February 23, 1950.

THOMAS BELK,
Secretary to the Probation Committee.
Municipal Buildings,
Middlesbrough.

COUNTY BOROUGH OF BIRKENHEAD

Appointment of Chief Assistant Solicitor

APPLICATIONS are invited from Solicitors with considerable experience of Local Government Law and administration for the appointment of Chief Assistant Solicitor at a commencing salary within Grade A.P.T. × (£850—£1,000) according to qualifications and experience.

Candidates must be capable and experienced advocates and able to conduct proceedings in Magistrates' and County Courts without supervision and must be prepared also to assist in the general legal and administrative work of the office.

Full particulars of the appointment and forms of application may be obtained from the undersigned by whom applications must be received not later than February 13, 1950.

DONALD P. HEATH,
Town Clerk.

Town Hall,
Birkenhead.
January 21, 1950.

INQUIRIES

BOROUGH OF WEYMOUTH AND MELCOMBE REGIS

Assistant Solicitor

APPLICATIONS are invited from qualified solicitors for the appointment of Assistant Solicitor at a salary in accordance with Grade VI of the National Scale (£595-£660).

Applicants must be thoroughly experienced in Conveyancing and able to act without supervision. Local Government experience is not essential.

The successful applicant will have the opportunity of obtaining wide Local Government experience including the administration of Town and Country Planning law.

Applications, stating age, qualifications and experience, and giving the names and addresses of two persons to whom reference can be made must be delivered to the undersigned not later than Saturday, February 11, 1950. Testimonials are not required.

PERCY SMALLMAN,
Town Clerk.

Municipal Offices,
Weymouth.

CITY OF MANCHESTER PROBATION SERVICE

APPLICATIONS are invited for the appointment of a full-time Male Probation Officer.

Applicants must be not less than 23 years, nor more than 40 years of age, unless the applicant is at present serving as a full-time Probation Officer.

The salary and Conditions of Service will be in accordance with the Probation Rules, 1949. Applications, in own handwriting, stating age, qualifications and experience, together with not more than three recent testimonials, should reach me not later than February 4, 1950, endorsed "Male Probation Officer."

WALTER LYON,
Clerk to the Justices and Secretary to the Probation Committee.

12, Minshull Street,
Manchester, 1.

OXFORDSHIRE COMBINED PROBATION AREA

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time Male Probation Officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a Medical Examination.

Applications stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach me not later than first post on Saturday February 25, 1950. Envelopes should be marked "Probation Officer."

F. G. SCOTT,
Clerk to the Oxfordshire Combined Area Probation Committee.

County Hall,
Oxford.

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